



**AN ENQUIRY INTO THE APPLICATION OF EU ANTI-  
DUMPING LAW WITH PARTICULAR REFERENCE TO  
PAKISTAN**

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DUMPING LAW WITH PARTICULAR REFERENCE TO  
PAKISTAN**

**By**

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## **ABSTRACT**

Dumping is to unfairly sell goods at a lower price (at foreign market) as compared to their normal value at domestic market of the manufacturing country, thus causing material injury to the local industry of the importing country. Other researchers have explored the global (WTO Agreement) and the European Union's (EU) Anti-Dumping law mostly with a commercial perspective. At doctoral level EU-China, EU-Japan and EU-Korea trade relations with reference to the application of protective measures have been studied. This dissertation is, however, the very first aimed to examine the application of EU Anti-Dumping law relating to Pakistan. This is a complete health check of EU-Pakistan trade relations with reference to the application of Anti-dumping duties on Pakistan.

This study is a combination of doctrinal research and empirical research, whereby it critically evaluates the Commission's investigation and the judgements of the EU Courts related to Pakistan and thus establish their consistency or inconsistency; it also studies the voting patterns within the Council and the impact of AD duties on Pakistani imports. It is a qualitative exploratory study based upon an inductive approach.

Contradictions are found in the calculations of normal value and export price, constructed normal value, the comparison of normal value and export price, the calculation of dumping margin, and the calculation of injury. Suggestions are made as to the extent to which Unions' anti-dumping rules need to be reviewed to moderate their tilt that unequivocally favours Union manufacturers. Moreover, this dissertation identifies many provisions of the basic regulation, which being too vague offers multiple interpretations, which are thus recommended to be amended.

In the empirical part of this research the voting style of EU member states for or against the adoption of AD measures against Pakistan has been studied. Thereafter, the content analysis of stated reasons for specific voting styles reveals that the member states vote on the basis of the findings and conclusions of investigation as done by the Commission, thus trade partner loyalty is not the reason for their voting. Furthermore, application of the ADDs is found to be reason of import decline from Pakistan to the EU.



## **AUTHOR'S DECLARATION**

I declare that this thesis is my own unaided work. It is being submitted for the degree of Doctor of Philosophy at the University of Bedfordshire.

It has not been submitted before for any degree or examination in any other University.

Name of candidate: Muhammad Bilal

Signature:

Date:

## **CONFERENCE PAPERS**

1. A paper was presented on ‘case analysis of Gul Ahmed textiles v Council of the European Union’ in a conference organised by International Journal of Arts and Sciences held at Harvard, Boston, USA on 26-30 May 2015.
2. A research Poster was presented on ‘Consistency of the European Anti-Dumping laws’ in an annual conference of University of Bedfordshire in July 2014.
3. A paper was presented on ‘Research Methodology’ in an annual seminar of Centre for Research in Law (CRIL) University of Bedfordshire in August 2014.

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## LIST OF CONTENTS

<b>ABSTRACT .....</b>	<b>iii</b>
<b>AUTHOR'S DECLARATION .....</b>	<b>v</b>
<b>CONFERENCE PAPERS .....</b>	<b>vi</b>
<b>ACKNOWLEDGEMENTS .....</b>	<b>vii</b>
<b>LIST OF CONTENTS .....</b>	<b>viii</b>
<b>LIST OF TABLES .....</b>	<b>xvii</b>
<b>LIST OF FIGURES .....</b>	<b>1</b>
<b>ABBREVIATIONS .....</b>	<b>3</b>
<b>CHAPTER ONE: INTRODUCTION .....</b>	<b>5</b>
<b>PART I: INTRODUCTION TO THE THESIS .....</b>	<b>5</b>
1.1 RESEARCH BACKGROUND.....	5
1.2 AIM AND OBJECTIVES OF THIS STUDY .....	6
1.3 RESEARCH QUESTIONS.....	8
1.4 RATIONALE AND SIGNIFICANCE OF THE STUDY .....	9
1.5 RESEARCH METHODOLOGY.....	11
1.6 RESEARCH GAP IN THE EXISTING LITERATURE.....	14
1.7 STRUCTURE OF THIS THESIS.....	16
<b>PART II: HISTORICAL DEVELOPMENTS, KEY CONCEPTS AND INSTITUTIONAL FRAMEWORK OF the EU .....</b>	<b>18</b>
1.8 DEVELOPMENT OF THE WTO ANTI-DUMPING AGREEMENT 1995 ...	18
1.9 DEVELOPMENT OF EU ANTI DUMPING FRAMEWORK.....	20
1.9.1 ESTABLISHMENT OF EU AND EU'S ANTI-DUMPING INFRASTRUCTURE THROUGH TREATIES OF THE EU .....	20
1.9.2 DEVELOPMENT OF EU'S BASIC ANTI-DUMPING REGULATIONS .....	22
1.10 REGULATION (EC) 1225/2009 IN A NUTSHELL: KEY CONCEPTS.....	23
1.11 ATTEMPTS TO REFORM EU'S TRADE DEFENSE INSTRUMENT .....	30
1.12 EU INSTITUTIONAL FRAMEWORK BREAKDOWN .....	32
1.12.1 EU COMMISSION.....	32
1.12.2 COUNCIL OF THE EUROPEAN UNION.....	34

1.12.3	THE COMMITTEE OF PERMANENT REPRESENTATIVES .....	34
1.12.4	EUROPEAN PARLIAMENT.....	35
1.12.5	THE EU COURT OF JUSTICE .....	35
1.12.6	THE GENERAL COURT.....	36
1.13	AMENDMENTS TO THE EU INVESTIGATIVE AUTHORITIES' FUNCTIONING POST REGULATION (EU) 37/2014.....	37
<b>CHAPTER TWO: ANTI-DUMPING DUTIES IMPOSED ON ALL OTHER PAKISTANI IMPORTS EXCEPT TEXTILES: CRITICAL EXAMINATION OF THE EU COMMISSION'S INVESTIGATIONS AND THE JUDGEMENTS OF THE EU COURTS .....</b>		<b>40</b>
2.1	INTRODUCTION .....	40
2.2	PROVISIONAL MEASURES IMPOSED ON POLYETHYLENE TEREPHTHALATE EXPORTS .....	40
2.2.1	NORMAL VALUE.....	41
2.2.2	EXPORT PRICE.....	43
2.2.3	COMPARISON .....	43
2.2.4	DUMPING MARGIN.....	43
2.2.5	INJURY .....	44
2.2.6	CAUSATION .....	44
2.2.7	ANALYSIS.....	45
2.3	IMPOSITION OF DEFINITIVE DUTY BY THE COUNCIL REGULATION (EC) NO 1467/2004.....	52
2.3.1	NORMAL VALUE.....	53
2.3.2	ANALYSIS.....	54
2.4	IMPOSITION OF PROVISIONAL AD DUTY ON PAKISTANI POLYETHYLENE TEREPHTHALATE.....	58
2.4.1	INITIATION.....	58
2.4.2	PRODUCT CONCERNED AND LIKE PRODUCT .....	59
2.4.3	NORMAL VALUE.....	59
2.4.4	COMPARISON .....	60
2.4.5	NEGATIVE DUMPING MARGIN AND TERMINATION OF INQUIRY ...	60
2.4.6	ANALYSIS.....	61
2.5	INITIATION AND WITHDRAWAL OF COMPLAINT FOR IMPOSITION OF AD DUTY ON ETHYL ALCOHOL BEING EXPORTED FROM PAKISTAN.....	62
2.5.1	INITIATION.....	62
2.5.2	TERMINATION OF PROCEEDINGS .....	63
2.5.3	ANALYSIS.....	63
2.6	EXTENSION OF AD DUTY ON ELECTRONIC COMPACT FLUORESCENT LAMPS ASSEMBLED IN AND/OR ORIGINATING FROM PAKISTAN.....	65

2.6.1	INITIATION OF PROCEEDINGS .....	65
2.6.2	CHANGE IN THE TRADE PATTERN.....	66
2.6.3	NATURE OF THE CIRCUMVENTION PRACTICE.....	66
2.6.4	ANALYSIS.....	68
2.7	CASE ANALYSIS OF CASE T-469/07 .....	72
2.7.1	BRIEF FACTS OF THE CASE.....	72
2.7.2	JUDGEMENT.....	74
2.7.3	COMMENT .....	75
2.8	CONCLUSION.....	82
<b>CHAPTER THREE: IMPOSITION OF ANTI-DUMPING DUTIES ON BED LINEN ORIGINATING FROM PAKISTAN: ANALYSIS OF EU COMMISSION'S INVESTIGATIONS AND THE JUDGEMENTS OF THE EU COURTS..... 85</b>		
3.1	INTRODUCTION .....	85
3.2	PROVISIONAL ANTI-DUMPING DUTY IMPOSED ON COTTON-TYPE BED LINEN THROUGH REGULATION (EC) NO 1069/97 .....	85
3.2.1	PRODUCT CONCERNED AND LIKE PRODUCT .....	86
3.2.2	NORMAL VALUE.....	87
3.2.3	EXPORT PRICE.....	88
3.2.4	COMPARISON .....	88
3.2.5	DUMPING MARGIN.....	89
3.2.6	ALLEGATION OF INJURY .....	90
3.2.7	ANALYSIS.....	90
3.3	IMPOSITION OF DEFINITIVE AD DUTY ON PAKISTANI COTTON-TYPE BED LINEN THROUGH (EC) 2398/97 .....	96
3.3.1	NORMAL VALUE.....	96
3.3.2	COMPARISON .....	96
3.3.3	DUMPING MARGIN.....	97
3.3.4	ANALYSIS.....	98
3.4	TERMINATION OF PROCEEDINGS WITH REGARD TO IMPORTS OF BED LINEN FROM PAKISTAN .....	100
3.4.1	ANALYSIS.....	101
3.5	CASE ANALYSIS OF CASE C-351/04 .....	104
3.5.1	BRIEF FACTS OF THE CASE.....	104
3.5.2	JUDGEMENT.....	104
3.5.3	COMMENT .....	105
3.6	DEFINITIVE ANTI-DUMPING DUTY IMPOSED ON COTTON-TYPE BED LINEN ORIGINATING FROM PAKISTAN .....	110
3.6.1	PRODUCT CONCERNED AND LIKE PRODUCT .....	110

3.6.2	VERIFICATION VISIT .....	111
3.6.3	NORMAL VALUE.....	113
3.6.4	EXPORT PRICE.....	114
3.6.5	COMPARISON .....	114
3.6.6	DUMPING MARGIN.....	115
3.6.7	CAUSAL LINK .....	116
3.6.8	UNDERTAKING .....	116
3.6.9	ANALYSIS.....	116
3.7	PARTIAL INTERIM REVIEW OF PROVISIONAL MEASURES IMPOSED ON PAKISTANI TEXTILE EXPORTERS .....	127
3.7.1	NORMAL VALUE.....	128
3.7.2	EXPORT PRICE.....	130
3.7.3	COMPARISON .....	130
3.7.4	DUMPING MARGIN.....	131
3.7.5	ANALYSIS.....	131
3.8	CONCLUSION .....	135
<b>CHAPTER FOUR: ANTI-DUMPING DUTIES IMPOSED ON UNBLEACHED COTTON FABRICS: CRITICAL REVIEW OF THE EU COMMISSION'S INVESTIGATIONS AND THE JUDGEMENTS OF EU COURTS .....</b>		<b>137</b>
4.1	INTRODUCTION .....	137
4.2	IMPOSITION OF PROVISIONAL AD DUTY ON UNBLEACHED COTTON FABRICS THROUGH COMMISSION REGULATION (EC) No 2208/96.....	137
4.2.1	PRODUCT UNDER INVESTIGATION AND LIKE PRODUCT .....	138
4.2.2	NORMAL VALUE.....	138
4.2.3	EXPORT PRICE.....	139
4.2.4	COMPARISON .....	139
4.2.5	DUMPING MARGIN AND INJURY .....	140
4.2.6	LAPSE OF MEASURES .....	140
4.2.7	ANALYSIS.....	141
4.3	CASE ANALYSIS OF CASE T-213/97 .....	146
4.3.1	BRIEF FACTS OF THE CASE.....	146
4.3.2	ARGUMENTS OF THE PARTIES.....	146
4.3.2.1	ARGUMENTS OF THE COUNCIL .....	146
4.3.2.2	APPLICANT'S ARGUMENTS .....	147
4.3.3	FINDINGS OF THE COURT.....	147
4.3.4	COMMENT .....	148
4.4	APPEAL IN FRONT OF EU COURT OF JUSTICE CASE C-76/01 .....	149

4.4.1	JUDGEMENT.....	149
4.4.2	COMMENT .....	151
4.5	PROVISIONAL ANTI-DUMPING DUTY IMPOSED ON UNBLEACHED COTTON FABRICS THROUGH COMMISSION REGULATION (EC) NO 773/98..	152
4.5.1	NORMAL VALUE.....	153
4.5.2	COMPARISON .....	154
4.5.3	DUMPING MARGIN.....	154
4.5.4	ANALYSIS.....	155
4.6	CASE ANALYSIS OF CASE T-192/98 .....	160
4.6.1	FACTS .....	160
4.6.2	JUDGEMENT.....	161
4.6.3	COMMENT .....	161
4.7	COMPLAINT FOR IMPOSITION OF PROVISIONAL MEASURES ON CERTAIN SYNTHETIC STAPLE FIBRE ORIGINATING FROM PAKISTAN.....	164
4.7.1	ALLEGATION OF DUMPING .....	164
4.7.2	NORMAL VALUE.....	165
4.7.3	ALLEGATION OF INJURY .....	165
4.7.4	WITHDRAWAL OF COMPLAINT .....	165
4.7.5	ANALYSIS.....	165
4.8	CONCLUSION.....	168
<b>CHAPTER FIVE: CASE ANALYSIS OF CASE T-199/04 AND CASE C-638/11.</b>		<b>171</b>
5.1	INTRODUCTION .....	171
5.2	HOLDING (THE APPLIED RULES OF LAW).....	173
5.3	CASE ANALYSIS OF GUL AHMED TEXTILE (PVT) Ltd V COUNCIL OF THE EUROPEAN UNION CASE T-199/04.....	174
5.3.1	THE FACTUAL CONTEXT OF THE CASE.....	174
5.3.2	ARGUMENTS OF THE PARTIES.....	177
5.3.2.1	PLEA AND ARGUMENTS OF GUL AHMED .....	177
5.3.2.2	LEGAL BASIS OF COUNCIL'S ARGUMENTS .....	179
5.3.3	JUDGEMENT OF THE GENERAL COURT.....	181
5.3.3.1	RATIO DECIDENDI.....	181
5.3.3.2	OBITER DICTUM .....	185
5.3.4	COMMENT .....	187
5.4	APPEAL IN FRONT OF THE EU COURT OF JUSTICE CASE C-638/11.	196
5.4.1	ARGUMENTS OF THE PARTIES.....	196
5.4.1.1	COUNCIL'S ARGUMENTS .....	196



5.4.1.2	GUL AHMED'S ARGUMENTS .....	197
5.4.2	JUDGEMENTS OF THE EU COURT OF JUSTICE CASE C-638/11 .....	198
5.5	OPINION OF THE ADVOCATE GENERAL.....	199
5.6	COMMENT .....	201
5.7	CONCLUSION.....	212
<b>CHAPTER SIX: EMPIRICAL STUDY OF EU MEMBER STATES' VOTING, RATIONALE OF VOTING AND IMPACT OF DUTIES ON FLOW OF IMPORTS FROM PAKISTAN.....</b>		<b>213</b>
6.1	INTRODUCTION .....	213
6.2	IMPACT OF IMPOSED DUTIES ON FLOW OF IMPORTS OF CONCERNED PRODUCTS FROM PAKISTAN.....	213
6.2.1	IMPACT OF DUTY IMPOSED BY COUNCIL REGULATION (EC) NO 1467/2004 ON IMPORTS OF POLYETHYLENE TEREPHTHALATE .....	213
6.2.2	IMPACT OF DUTY IMPOSED ON IMPORTS OF COMPACT FLUORESCENT LAMPS .....	216
6.2.3	IMPACT OF AD DUTY IMPOSED ON IMPORT OF BED LINEN OF COTTON .....	217
6.2.4	IMPACT OF AD DUTY IMPOSED ON IMPORTS OF BED LINEN OF COTTON MIXED WITH FLAX .....	219
6.2.5	IMPACT OF DUTY IMPOSED ON IMPORT OF BED LINEN OF MAN-MADE FIBRE .....	221
6.2.6	IMPACT OF AD DUTY IMPOSED ON IMPORT OF PRINTED BED LINEN .....	223
6.2.7	IMPACT OF AD DUTY IMPOSED ON IMPORTS OF BED LINEN KNITTED .....	225
6.3	VOTING IN THE COUNCIL FOR/AGAINST ADOPTION OR TERMINATION OF AD MEASURES RELATED TO PAKISTAN .....	227
6.4	THE RATIONALE OF EU MEMBER STATES' VOTING FOR/AGAINST ADOPTION OR TERMINATION OF ANTI-DUMPING MEASURES RELATED TO PAKISTAN: AN EXAMPLE OF DENMARK AND SWEDEN.....	243
6.4.1	POLYETHYLENE TEREPHTHALATE.....	243
6.4.2	COMPACT FLUORESCENT LAMPS.....	245
6.4.2.1	COUNCIL REGULATION (EC) 866/2005 .....	245
6.4.2.2	COUNCIL REGULATION (EC) 1205/2007 .....	246
6.4.3	COTTON-TYPE BED LINEN .....	248
6.4.3.1	PROPOSAL FOR ADOPTION OF COUNCIL REGULATION (EC) 2398/97 .....	248
6.4.3.2	PROPOSAL FOR COUNCIL REGULATION (EC) 160/2002 .....	250
6.4.3.3	PROPOSAL FOR COUNCIL REGULATION (EC) 397/2004 .....	251
6.4.3.4	PROPOSAL FOR COUNCIL REGULATION (EC) 1205/2007 .....	252

6.5	CONCLUSION.....	252
	<b>CHAPTER SEVEN: FINDINGS AND CONCLUSION .....</b>	<b>254</b>
7.1	INTRODUCTION .....	254
7.2	RECOMMENDATIONS AND FINDINGS.....	255
7.2.1	SECTION 2.1.....	255
7.2.1.1	COMMISSION’S OBLIGATION TO GIVE ADEQUATE STATEMENT OF REASONS .....	255
7.2.1.2	EXCESSIVE DISCRETION IN ARTICLE 2(4).....	256
7.2.2	SECTION 2.2.....	256
7.2.2.1	MANIFEST ERROR OF ASSESSMENT COMMITTED BY THE COMMISSION .....	256
7.2.2.2	COMMISSION’S STATEMENT ABOUT NUMBER OF TYPES OF PRODUCT WHOSE SALE FOUND IN “ORDINARY COURSE OF TRADE” IS INSUFFICIENT.....	257
7.2.3	INCONSISTENT CALCULATION OF NORMAL VALUE AND DUMPING MARGIN AS PERFORMED BY THE COUNCIL AND COMMISSION .....	257
7.2.4	BREACH OF THE EQUALITY PRINCIPLE .....	258
7.2.5	SECTION 2.5.....	259
7.2.5.1	VIOLATION OF ARTICLE 5(4) BY THE COMMISSION .....	259
7.2.5.2	COMMISSION’S NON COMPLIANCE WITH ARTICLE 13(4).....	259
7.2.6	SECTION 2.6.....	260
7.2.6.1	MANIFEST ERROR OF ASSESSMENT COMMITTED BY THE INSTITUTIONS WITH REGARD TO ARTICLES 5(4) AND 9(1) .....	260
7.2.6.2	COMMISSION’S EXCESSIVE DISCRETION AND USAGE OF DIFFERENT METHODOLOGIES IN INVESTIGATIONS REACHING THE OPPOSITE CONCLUSIONS .....	261
7.2.7	EXCLUSION OF <i>DE MINIMIS</i> DUMPING MARGIN CALLS FOR AMENDMENT OF ARTICLE 9(6).....	262
7.2.8	CALCULATION OF NEGATIVE DUMPING MARGIN BY THE COUNCIL AS OPPOSED TO THE POSITIVE DUMPING MARGIN CALCULATED BY THE COMMISSION IN RESPECT OF SAME PRODUCT .....	263
7.2.9	SECTION 3.4.....	263
7.2.9.1	USE OF “ZEROING” AGAINST THE SPIRIT OF BASIC REGULATION.....	263
7.2.9.2	IN ARTICLE 2(6) THE PLURAL PHRASE ‘OTHER EXPORTERS OR MANUFACTURERS’ SHOULD BE REPLACED WITH A SINGULAR PHRASE .....	264
7.2.10	SECTION 3.5.....	264

7.2.10.1	PROVISION OF MISLEADING INFORMATION BY PAKISTANI EXPORTERS LEADS TO THE ERRONEOUS CALCULATION OF NORMAL VALUE AND DUMPING MARGIN FOR THEM.....	264
7.2.10.2	A SPECIFIC REPRESENTATIVE THRESHOLD IS NECESSARY FOR FAIR SAMPLING OF FOREIGN EXPORTERS .....	265
7.2.10.3	CALCULATION OF AVERAGE DUMPING MARGIN FOR SAMPLED EXPORTERS IS AGAINST THE SPIRIT OF ARTICLE 17 .....	266
7.2.11	LESSER RATE OF DUTY CALCULATED BY THE COUNCIL IN REVIEW INVESTIGATION.....	267
7.2.12	FAILURE TO GIVE ADEQUATE STATEMENT OF REASONS .....	268
7.2.13	THE GENERAL COURT AND EU COURT OF JUSTICE INTERPRETS ‘REVIEWABILITY OF FAILURE TO ADOPT DEFINITIVE MEASURES’ INCONSISTENTLY .....	269
7.2.14	IN TWO DIFFERENT INVESTIGATIONS THE COMMISSION CALCULATED INCONSISTENT DUMPING MARGIN IN RESPECT OF SAME EXPORTERS EXPORTING SAME PRODUCT .....	269
7.2.15	INCONSISTENT INTERPRETATION OF ‘OTHER KNOWN FACTORS’ MADE BY THE GENERAL COURT AND THE EU COURT OF JUSTICE.....	270
7.3	LIMITATIONS OF THIS RESEARCH .....	271
7.4	FUTURE PROSPECTS OF THE RESEARCH .....	272
7.5	CONCLUDING THOUGHTS .....	273
	<b>BIBLIOGRAPHY .....</b>	<b>281</b>
	BOOKS.....	281
	EDITED AND TRANSLATED BOOKS.....	286
	CHAPTERS IN BOOKS .....	286
	JOURNAL ARTICLES .....	288
	ONLINE JOURNALS, DISCUSSION AND WORKING PAPERS .....	295
	COMMISSION NOTICES AND REGULATIONS.....	301
	COUNCIL REGULATIONS.....	305
	EU PARLIAMENT REGULATIONS.....	307
	NEWS ARCHIVES .....	308
	PHD THESIS .....	308
	REPORTS .....	309
	TREATIES AND AGREEMENTS .....	310
	CASES.....	311
	CASE COMMENTS.....	323
	OPINION OF ADVOCATE GENERAL .....	324
	<b>APPENDIX I: LETTERS WRITTEN TO THE EU COMMISSION FOR ACCESS TO THE VOTING TRENDS OF MEMBER STATES.....</b>	<b>327</b>

<b>APPENDIX II: EU COMMISSION’S REPLY .....</b>	<b>331</b>
<b>APPENDIX III: REQUEST (AND SAMPLE OF ITS REPLY) FOR ACCESS TO REASONS FOR PARTICULAR VOTING PATTERNS OF SWEDEN .....</b>	<b>347</b>
<b>APPENDIX IV: REQUEST (AND ITS REPLY) FOR ACCESS TO REASONS FOR PARTICULAR VOTING PATTERNS OF DENMARK.....</b>	<b>361</b>
<b>APPENDIX V: REQUESTS (ALONG WITH THEIR REPLYS) SENT TO SOME OTHER MEMBER STATES WHICH WAS DECLINED DUE TO THE CONFIDENTIALITY OF DOCUMENTS .....</b>	<b>365</b>
<b>APPENDIX VI: SAMPLE OF IMPORT DATA OF PRODUCTS (ORIGINATED FROM PAKISTAN) WHICH HAD BEEN SUBJECT TO EUROPEAN AD DUTY .....</b>	<b>385</b>

## LIST OF TABLES

Table 1.1: Transition of European treaties as from 1948 to date.....	17
Table 2.1: Anti-Dumping duties imposed on all other Pakistani imports except textile products.....	79-80
Table 4.1: Anti-Dumping duties imposed on textile products originated from Pakistan.....	166-167
Table 6.1: Describing import of Polyethylene terephthalate from Pakistan to EU through last sixteen years.....	212
Table 6.2: Shows the flow of Bed linen of Cotton from Pakistan to EU through last 21 years-Value in Euros.....	216
Table 6.3: Shows the flow of Bed linen of Cotton mixed with flex from Pakistan to EU through last 21 years-Value in Euros.....	217
Table 6.4: Indicates the import of Bed linen of man-made fibre from Pakistan to EU through last 21 years-Value in Euros.....	219
Table 6.5: Illustrates the import of Printed Bed linen of textile materials from Pakistan to EU through last 21 years-Value in Euros.....	221
Table 6.6: Demonstrates the import of Bed linen, knitted or crocheted from Pakistan to EU through last 21 years-Value in Euros.....	223
Table 6.7: Closure of the written procedure for the adoption of a Council Regulation imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of polyethylene terephthalate originating in Australia, the People's Republic of China and terminating the anti-dumping proceeding concerning imports of polyethylene terephthalate originating in Pakistan and releasing the amounts secured by way of the provisional duties imposed.....	225

Table 6.8: Proposal for a Council Regulation (EC) 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan.....	228
Table 6.9: Proposal for a Council Regulation (EC) 160/2002 amending Council Regulation (EC) No 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan, and terminating the proceeding with regard to imports originating in Pakistan.....	231
Table 6.10: Proposal for a Council Regulation (EC) 397/2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan.....	233
Table 6.11: Proposal for a Council Regulation (EC) 695/2006 amending Regulation (EC) No 397/2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan.....	236

## LIST OF FIGURES

Figure 1.1: A World map of WTO membership.....	15
Figure 1.2: Explaining the calculation method of Dumping Margin.....	21
Figure 1.3: Explaining the course of investigation in Anti-Dumping cases.....	25
Figure 6.1: Shows the level of trade of polyethylene terephthalate before and after imposition of Subsidy duty in 2010.....	212
Figure 6.2: Differentiates the magnitude of import flow of CFL with and without the imposition of AD measures.....	214
Figure 6.3: Shows the impact of imposition of Anti-Dumping duties on Export of Bed linen of cotton (CN Code 63023190) from Pakistan to EU.....	215
Figure 6.4: Differentiates the magnitude of import from Pakistan to EU of Bed linen of Cotton mixed with flax (CN Code 63023110) with and without application of safeguard measures.....	217
Figure 6.5: Differentiates the magnitude of import from Pakistan to EU of Bed linen of man-made fibres (CN Code 63023290) with and without application of Anti-Dumping duty.....	219
Figure 6.6: Differentiates the magnitude of import from Pakistan to EU of Printed Bed linen of textile materials (CN Code 63022290) with and without application of Anti-Dumping duty.....	221
Figure 6.7: Differentiates the magnitude of import from Pakistan to EU of Bed linen Knitted or Crocheted (CN Code 63022100) with and without application of Anti-Dumping duty.....	223
Figure 6.8: Voting patterns of the member states for/against imposition of ADD on imports originated from Pakistan.....	224

Figure 6.9: Explaining the voting patterns of EU member states for/against imposition of ADD on cotton-type bed linen of Pakistan.....	227
Figure 6.10: Explaining the voting patterns of EU member states for/against imposition of ADD on cotton-type bed linen of Pakistan in 1997.....	230
Figure 6.11: Explaining the voting patterns of EU member states for/against imposition of ADD on cotton-type bed linen of Pakistan in 2004.....	232
Figure 6.12: Explaining the voting patterns of EU member states for/against amendment of previously imposed ADD on cotton-type bed linen of Pakistan in 2006.....	235
Figure 6.13: Explaining the voting patterns of EU member states for/against imposition of ADD on unbleached cotton fabrics originated from Pakistan.....	238



## **ABBREVIATIONS**

AD	Anti-Dumping
ADA	Anti-Dumping Agreement
ADD	Anti-Dumping duty
APME	Association of Plastic Manufacturers in Europe
APTMA	All Pakistan Textiles Manufacturers Association
AS	Anti-Subsidy
CFL-i	Compact Fluorescent Lamps
CJEC	European Court of Justice
CIF	Cost, Insurance and Freight
CN Code	Combined Nomenclature Code
CUSFTA	CANADA-UNITED STATES Free Trade Agreement
CV	Countervailing
DM	Dumping Margin
EC	European Commission
EEC	European Economic Community
EGC	European General Court
EP	Export Price
EU	European Union
EUROCOTON	European Federation of the Cotton and Allied Textile Industries
EU Commission	European Commission
EU Council	Council of the European Union
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GSP	Generalised System of Preference

IP	Investigation Period
LITE	The Lighting Industry and Trade in Europe
Ltd	Limited
MOU	Memorandum of Understanding
NAFTA	The North American Free Trade Agreement
NME	Non Market Economy
NV	Normal Value
OJ	Official journal
PET	Polyethylene Terephthalate
PRC	Peoples Republic of China
Pvt	Private Limited
Reg	Regulation
SAFTA	South Asian Free Trade Area
SG&A Costs	Selling General and Administrative costs
TDI	Trade Defence Instrument
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TTB	Temporary Trade Barrier
WTO	World Trade Organisation
UK	United Kingdom
Union	The European Union
USA	United States of America

## **CHAPTER ONE: INTRODUCTION**

### **PART I: INTRODUCTION TO THE THESIS**

#### **1.1 RESEARCH BACKGROUND**

Dumping is to export products into the market of another state at a lower price than their normal value (NV) in the exporting country. Sometimes such export price (EP) is even equal to or lower than the cost of manufacture of the product, and the budget of making reported by the relevant company through investigation is usually found to be erroneous.<sup>1</sup> It is an unfair practice, as it causes damage to the home industry of the importer country. Therefore, in order to address this problem, almost all countries have now adopted Anti-Dumping laws to safeguard their local industry. However Finger opine that anti-dumping (AD) as practiced today is a combination of power politics, bad economics and shameful public administration.<sup>2</sup>

Through last two decades the EU has imposed many AD duties on Pakistan through Council Regulation (EC) 384/96 and Council Regulation (EC) 12225/2009. Commonly, cotton type bed linen, unbleached cotton fabric and polyethylene terephthalate had been the subject matter of these duties. A wide gap in research is intended to be filled because research about consistent and/or inconsistent procedures of the EU Commission through application of its AD duties is drastically needed as, it has not investigated before.

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<sup>1</sup> Ralf Boscheck, 'The Governance of Global Market Relations: The Case of Substituting Antitrust for Anti-dumping' (2001) 24(1) World Competition 41

<sup>2</sup> Michael Finger, 'Reform' in Michael Finger (ed), *Anti-dumping- How it Works and Who Gets Hurt* (Michigan University Press 1993) 57

Therefore, this study will originally contribute to the existing knowledge by analysing the actions and procedures of EU Commission, Council and judicature within the light of recurrent applicable AD law; and is attempting to identify the grey areas (provisions offering multiple interpretations) in the EU's AD law which led to the controversial conclusions drawn by the EU institutions with specific reference to Pakistan. Subsequently, it is also significant to explore whether application of these AD duties on Pakistan affect the scale of imports from Pakistan.

The in-depth examination of EU's application of AD law related to Pakistan helps to understand certain application and interpretation issues associated with the EU's basic AD regulation e.g. in *Gul Ahmed v Council*<sup>3</sup>, the EU Court of Justice and the General Court interpreted Article 3(7) of the basic regulation. Similarly, inconsistent calculations of the Dumping margin and Normal value as done by the Commission and the Council through multiple AD investigations related to Pakistan also signify the need explore and identify the problems.

However, in order to explore the consistency of EU institutions, it is necessary to understand the historical development of global and EU AD framework. It is also required to understand the functioning and structural framework of the EU institutions. It is precisely described as follows.

## **1.2 AIM AND OBJECTIVES OF THIS STUDY**

This dissertation aims to study the implementation and interpretation of EU AD laws by EU institutions including, the EU Court of Justice. How do EU institutions interpret same question of law falling under similar circumstances but in different cases? In this regard, in-depth analysis of all AD duties imposed on Pakistan through at least the last 20 years is carried out. And the interpretation/decision of investigative and judicial bodies is checked against corresponding cases and pertinent legislation.

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<sup>3</sup> Case C-638/11, *Council of the European Union v Gul Ahmed Textiles Ltd* [2013] OJ C 65; Case T-199/04, *Gul Ahmed textiles Ltd v Council of the European Union* [2011] ECR II-00321

Calculation of dumping margin, construction of normal value, fair comparison, adjustments to normal value or export price, other known factors and causal link are the most debateable topics of AD laws. Therefore, this dissertation aims to ascertain whether the EU Commission's calculations regarding normal value etc. find their basis from relevant law and other judicial precedents or not. Moreover, this research is targeting the discretionary aspects of the AD laws, and will entail whether such discretionary interpretations tend to prejudice either of the parties to the litigation. In order to achieve this goal the AD duties imposed on Pakistani products including, cotton-type bed linen, polyethylene terephthalate, ethanol and staple fibre fabrics are analysed.

Additionally, through deep analysis of *Gul Ahmed* case law, the multi-dimensional interpretation of other known factors in Article 3(7) of Council Regulation 1225/2009 made by the General Court and the EU Court of Justice is aimed to be investigated within the context of scope of Article 3(7). Through such examination of legal debate involved in the said case, this study aims to conclude whether legislative amendments could be considered within the ambit of other known factors thus, if their non-attribution analysis is necessary or not? Similarly, the findings of this case are aimed to corroborate with the WTO panel report on the same subject matter of causal link analysis.

Furthermore, the researcher intends to study the scope and reasons for the application of investigation of dumping against Pakistan's bed linen. It will be suggested that zeroing practice does not have any basis in the WTO Agreement 1995, and it is an unfair practice which may significantly prejudice fair trade. Through the analysis of advantages and disadvantages of zeroing practice the logic/ or otherwise of its basis shall be explored. This research aims to draw conclusions and make recommendations with regard to the future of this practice.

This study inclines to find the basis for particular voting patterns of EU member states through imposition of different definitive AD duties on Pakistan. In this regard the data provided by the Council of the European Union is analysed, to figure out countries which have been mostly on Pakistan's side and against it.

Later, EU member states are individually contacted to know the reasons for their specific voting patterns. Through the analysis of their replies it is aimed to conclude that either it was trade partner loyalty which instigated the member states to vote in favour of Pakistan or they voted purely on legal and technical grounds.

Similarly, it is aimed to unearth whether different interest groups within the EU can influence the whole course of an investigation, and whether big countries usually succeed against the will of comparatively small countries. In the same way it will establish whether strong association and unity among different stakeholders helps them to get their interests secured. This dissertation has also supplementary objective: to find out if AD laws are really being used against unfair trade instead of fair and competitive trade.

The dissertation also studies the scope and practical application of the Community interest clause, and tries to establish that sometimes the imposition of AD duty on foreign exports is not in the favour of the EU nationals, as they lose the opportunity to have access to cheap foreign exports. Although the Community interest clause entails analysis of interest of the whole Union, including all stakeholders, as a matter of fact it is the public whose interest is least secured, as it does not have very strong associations like Union manufacturers.

### **1.3 RESEARCH QUESTIONS**

1. How consistently do the EU institutions including the Commission and the EU Court of Justice interpret and implement AD law with reference to Pakistan?
2. What were the voting patterns of the EU member states in the EU Council for imposition of duties on Pakistan and what were the reasons for those particular voting patterns?
3. How does the imposition of AD duty affect the level of imports from Pakistan to EU?

## **1.4 RATIONALE AND SIGNIFICANCE OF THE STUDY**

Due to the existence of a gap in the available literature, a complete health check of EU-Pakistan trade relations in respect of the application of safeguard measures was drastically needed. An extensive research was needed examining the calculations of dumping margin and normal value etc. (as done by the Commission) through all investigations conducted by it related to Pakistan. It was also necessary to analyse whether some ambiguous provisions of the EU AD law led to its inconsistent interpretations as carried out by the investigative bodies (Commission and the Council) and Judicature (the General Court and EU Court of Justice). It was also necessary to establish whether these inconsistent approaches adopted by the institutions tend to jeopardise the application of the EU's AD law.

This research evaluates the trade relationships between Pakistan and the EU, specifically with reference to AD duties imposed on Pakistan. It provides a big picture covering maximum aspects of safeguard measures imposed on Pakistan and their background. The most important reason and logic of this study is that it is innovative and the very first in its nature on the topic of the consistency of EU AD laws regarding Pakistan. Although there are a couple of article written on the same general area, a study on the doctoral level has never been done. Similarly, the doctoral research has been done during 1993 to 2008 on EU-China, EU-Korea and EU-Japan trade relationships regarding AD duties, but EU-Pakistan mutual relationship in this area at doctoral level will be unearthed for the very first time by this thesis.

Secondly, while going through the in depth-analysis of the subject matter of this study, it highlights many occasions where investigating bodies, by using their discretionary powers, have significantly changed the course of investigation. However, these in-depth analyses throughout this study help to understand the disadvantages of the discretionary powers available to the investigative bodies.

It offers evidences through analysis of investigations (as conducted by the institutions) whereby Pakistani exports were unnecessarily targeted. In the same way it spots many occasions where the calculations of normal value, export price

and dumping margin etc. were not found to be well reasoned. The Commission may, however, have adopted other just ways offering more reliability and justification to its procedures.

As the national AD laws and EC Regulation 1225/2009, are based upon the international guiding Agreement (WTO Agreement 1995), therefore indirectly the critical evaluation of the EU's AD regime and corresponding recommendations also offer proposals to revise the ambiguous provisions of the WTO Agreement (which is quite older). Additionally, the removal of grey areas in the applicable legislation and procedures of the Commission and the Council can ultimately bring consistency in the whole mechanism of AD; and it may significantly help to reduce the litigation, as in most of the litigation the question of law is about the point of law, which is unclear bearing multiple interpretations of the concerned provisions.

Similarly, through analysis of voting patterns of EU member states, cast in the EU Council for imposition of various AD duties, it can help to find the countries which usually support the imposition of duties on Pakistan and those which mostly support Pakistani exports to EU. The analysis of reasons for particular voting patterns helps to negate the presumption that usually trade partner loyalty is the reason for the voting styles of the member states.

This study, however, unveils the multiple reasons for particular voting patterns of member states, as Union interest, manifest error of assessment by the Commission, and absence of material injury are found to be the most common grounds. The detailed reasons and logic for the specific voting pattern of each member state (discussed in detail in Chapter 8) may help Pakistani authorities to understand the rationale of specific voting pattern against or in support of them.

Moreover, this study explores the nature of AD duties: whether they are predominantly legal and technical, or just political and strategic. As the Commission can impose only provisional AD duties, but their transformation into definitive measures is only in the hand of the Council. And the Council is comprised of ministers from each member state, who vote on the basis of their



own interest. Therefore, it does not matter whether transparent and effective investigation is conducted by the Commission, as the final decision will be of the Council, based on the majority vote.

Furthermore, it suggests to Pakistani exporters that they should co-operate properly with the Commission through the investigation of dumping. As it has been found in the bed linen case, when Pakistani exporters provided misleading information regarding profit margin and cost of production, and verification visits could not be completed due to an anonymous threatening letter to the investigation team; therefore the Commission had to base its decision on the best available information. And it resulted in the form of higher AD duties for Pakistani producers. But later through the revision of measures and upon rendering the correct information by Pakistan exporters, the duty rates were reduced for them.

## **1.5 RESEARCH METHODOLOGY**

The research methods used for this study are a fine combination of doctrinal and empirical research. This study is doctrinal, as it investigates the context of laws and particular provision therein, and interprets the actions of investigative bodies according to the essence and crux of statutes. A standard issue based doctrinal examination has been conducted by taking following steps: assembling relevant facts; identifying the legal issues; analysing the issues with a view to searching for the law; locating and reading background information; locating and reading the primary sources including legislation and case laws; synthesizing all the issues in context; and coming to a tentative conclusion.

But at the same time, the study also relies on the empirical data sought from the EU Parliament and member states. Later, it interprets such innovative and first hand data to bring more originality in the work and to confirm the theoretical part of the study based on doctrinal research with the recurrent practical evidence from the ground.

The data related to doctrinal part of this research, specifically related to first research question of this thesis was originated from following significant sources: regulations of the Commission and the Council of the European Union; the EU Council's annual reports; Council regulation (EC) 1225/2009 (the basic regulation)<sup>4</sup>; the WTO panel reports; judgements of the General Court and of the EU Court of Justice; opinions of the advocate generals; news articles; journal articles and books.

For the empirical part, addressing the second research question of this thesis; the EU Parliament was contacted and requested to provide data regarding voting patterns of EU member states; as they cast votes for the transformation of provisional AD duties into definitive ones. The EU Parliament duly provided the requested data. On the basis of data collected from the EU Parliament, individual member states of the EU were contacted and requested to give access to the information regarding particular voting patterns. They were asked to provide information about reasons for their particular voting pattern either YES to impose AD on Pakistan, or NO in favour of Pakistan. Similarly, in order to answer third research question of this dissertation, data about magnitude of import of specific imports from Pakistan is collected from Eurostat website. Thus, level of imports with and without application of ADD on Pakistan's exports is compared to assess the impact of application of ADD.

For data analysis, different approaches have been adopted to analyse diverse forms of data establishing the base of the doctrinal part of this research. The Golden, literal and mischief rules of interpretation are applied to analyse the Council's and Commission's regulations, official reports and statutes. Where the meaning and text of the statute is absolutely clear, no other rule except the Literal Rule is applied. The Golden Rule of interpretation is applied where the text of the statute or regulations of the Council or Commission is found to be unclear. Where

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<sup>4</sup> Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports by the countries which are not member of European Community [2009] OJ L 343/51: (Regulation 37/2014 not being relevant to any of the investigations under discussion)

use of the Literal Rule may cause absurdity, recourse is made to the Golden Rule. This rule allows the interpreters to give meaning to unclear text based upon logic and reason, and reference to the context of the text.

The Mischief Rule is applied where instead of some provision, the statute and its language cause absurdity on a large scale. Under the Mischief Rule, the Court's role is to suppress the mischief the Act is aimed at and advance the remedy. It allows law to change as per the changing circumstance, although, it interrupts the rule of separation of power.

However, in the EU context, it is important to also consider a fourth rule of interpretation – that is teleological approach. Inside of this wide interpretative rule, the Court picks an extensive variety of sources. It extracts the aims and objectives of the European Community not just from those announced in the texts of the EC Treaty, but additionally from affirmations by member states or by Community institutions. Where suitable, the Court looks for solutions in the laws of member states. Much of the time it depends on legislative history as, for instance, a prior legislative proposition from the Commission of the European Communities ('Commission') including situations where that proposition has been rejected.<sup>5</sup>

In analysing the judgements of the EU Courts, two important concepts from English law were borne in mind: *obiter dicta* and *ratio decidendi*. A judge's communication of view expressed in Court or in a transcribed judgement, but not vital to the decision and hence not legally obligatory as a precedent, (*obiter dicta*) must be segregated from the *ratio decidendi* (the point in a case which determines the judgment" or "the principle which the case establishes").<sup>6</sup>

In this thesis at many points the operative and un-operative parts of the judgements were segregated, and use was made of the operative one. The most

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<sup>5</sup> Nial Fennelly, 'Legal Interpretation at the European Court of Justice' (1996) 20(3) Fordham International Law Journal 656, 664

<sup>6</sup> Alfred William Brian Simpson, *The Ratio Decidendi of a Case and the Doctrine of Binding Precedent* (Oxford University Press 1960) 3; Black's Law Dictionary (5th ed, 1979) 1135

recurrent example is the use of quotations from many judgements of the General court and the EU Court of Justice dealing with calculation of dumping margin, NV and EP etc. where the *ratio decidendi* of these judgements were used to corroborate or contradict the findings of EU Commission through their investigation of alleged dumping regarding Pakistan.

The voting patterns and rationale for such voting were analysed by employing qualitative content analysis. Similarly, the impact of AD duties imposed on Pakistan was examined by comparing the level of imports from Pakistan with and without the enforced protective measures.

## **1.6 RESEARCH GAP IN THE EXISTING LITERATURE**

It could be said that at doctoral level some researchers explored the EU's application of AD laws regarding different jurisdictions. For example, by illustrating the AD legislation of the US, Australia, New Zealand and Japan insofar as it is applicable to China, Qian conducted comparative studies to reveal alternative strategies in order to suggest solutions to several of the problems thus identified.<sup>7</sup> Eeckhout<sup>8</sup> analyses European AD policy towards China; Suder analyses and discusses the relationships between EC-Japan trade policy and the competitiveness of the European Consumer Electronics industry.<sup>9</sup> Alasdair Bell examined the EEC's application of Anti-dumping measures against Japan.<sup>10</sup> Similarly, through a comparative study of AD laws in the EU and Korea within the context of international law, Chun identified protectionist bias in the application of the EU's safeguard measures.<sup>11</sup>

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<sup>7</sup> Qian Wenjie, 'An Analysis of the Legal Problems and Issues Arising from the European Union's Current Anti-Dumping Legislation with Regard to the People's Republic of China (PhD thesis, University of Glasgow 2003)

<sup>8</sup> Piet Eeckhout, 'European Anti-Dumping Law and China' (1997) 1(7) EIOP <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=302667](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=302667)> accessed 20 December 2015

<sup>9</sup> Gabriele Suder, 'Anti-Dumping Measures and the Politics of EU-Japan Trade Relations in the European Consumer Electronics Sector' (PhD thesis, University of Bath 1993)

<sup>10</sup> Alasdair Bell 'Anti-dumping practice of the EEC : The Japanese dimension' (1987) 2 Legal Issues of European Integration 1

<sup>11</sup> Cheong-Ghi Chun, 'A Comparative study of Anti-Dumping laws in the EU and Korea in the Context of International Rules' (PhD thesis, University of Hull 1996)

But the EU's application of AD laws with respect to Pakistan, and the consistency of its procedures, still needs to be unearthed. A few research articles have been written in this regard, but only a few of them seem to be written within legal perspective.

None of them have paid relevant attention to the analysis of the investigation procedures of the EU Commission. Although, previous researchers have evaluated whether the EU Commission's calculations about normal value, export price and dumping margin were according to the relevant provisions of the law or not? But an analysis about EU institution's calculations and conclusions drawn through ADDs imposed on Pakistan was still lacking. Therefore, the current dissertation will originally establish either the consistency or inconsistency of the EU Commission's investigative procedures and calculations as things stand today. Additionally, most of the pieces of literature have been written by economists discussing the financial and economic aspects of AD duties through their quantitative studies. Therefore, the legal aspect of EU AD duties generally, and more specifically with respect to Pakistan, still needs to be evaluated.

Furthermore, the AD duties imposed on Pakistan in the last two decades are not studied yet; this research will explore all of them including the investigation procedures of the Commission, and the levying or withdrawal of duties. Similarly, the existing literature particularly related to EU-Pakistan trade disputes, is also lacking in another way, as researchers have rarely examined and critically evaluated the judgements of the General Court and EU Court of Justice in terms of their interpretations of legal provisions.

This thesis, therefore, will establish the consistencies/inconsistencies in the application of AD laws by the EU institutions including the EU Court of Justice. A separate chapter of this dissertation explores and analysis the interpretation of 'causal link' and 'other known factors' in the light of Article 3(7) of the basic regulation and other case laws. The said chapter thus originally concludes that instead of the EU Court of Justice's verdict, the interpretation as it is made by the

General Court is more logical and close to the literal meaning of Article 3(7) of the basic regulation.

Another way by which this research will fill the gap in existing literature is that it will explore the voting patterns of the EU member states for or against the imposition of AD on Pakistani products. It will also analyse the same in terms of the Commission's proposal for extension or termination of existing protective measures. Conclusively, this study is trying to identify the countries mostly voting in favour of or against Pakistan. In short there are many areas which still need to be addressed with reference to the EU's trade policy towards Pakistan, and this thesis potentially aims to address all those issues which are still untouched.

## **1.7 STRUCTURE OF THIS THESIS**

This thesis comprises of seven chapters. Chapter 1 is an introduction, giving the brief background of the study, rationale of the research and research questions. It explains the research methods used for this study. It also establishes the gap in the existing literature and justifies that, how this study will fill it.

Chapter 2, 3 and 4 analyse and discuss the AD duties imposed on Pakistan by the EU through the last two decades. Chapter two examines the AD imposed on all other Pakistani products except the textile sector, including polyethylene terephthalate and ethanol, while chapters three and four discuss the AD imposed on Pakistan's textile products, including cotton-type bed linen and staple fibre fabrics. These chapters study the procedures and course of investigation as it is conducted by the Commission. It identifies the possible ways which may be used to change the nature and outcome of the AD investigations. However, these chapters at the end conclude with possible recommendations to bring further consistency in the relevant provisions of law.

Chapter five analyses the findings of the General Court and the EU Court of Justice in *Gul Ahmed* case. It evaluates the interpretation of Article 3(7) about 'other known factors' and 'causal link' as it is made by both courts within the context of other cases falling in similar circumstances and WTO Panel reports.

Through identification of grey areas in the said interpretation, at the end this chapter concludes by giving recommendations accordingly.

Chapter six explores the voting design of EU member states for imposition of definitive measures on Pakistan. Further, it critically analyses the various motivations for different voting patterns of the EU member states. It examines the edge and advantage available to those stakeholders which are united in the form of association, over other stakeholders which are not so united.

The last chapter is the crux of the whole debate, as it is set out in the previous chapters. It concludes the whole story through analysis of all points of concerns raised in different chapters of the thesis. At the end it concludes with recommendations regarding procedures of the institutions, consistency and uniformity of the relevant provisions of the law. It describes the limitations of the study and at the end mentions the further dimensions of research in the same area.

## **PART II: HISTORICAL DEVELOPMENTS, KEY CONCEPTS AND INSTITUTIONAL FRAMEWORK OF THE EU**

### **1.8 DEVELOPMENT OF THE WTO ANTI-DUMPING AGREEMENT 1995**

Initially these safeguard measures were being used by few industrialised countries including the USA, the UK, Canada and Australia, but with the passage of time they are now being used globally. The situation, however, gets worse, when different countries adopted AD laws being inconsistent with each other. In order to synchronize the whole AD regime, the General Agreement on Tariffs and Trade (GATT) 1947 was launched as binding rules at international level.<sup>12</sup> The signatories of this agreement were required to orchestrate their national laws in accordance with Article VI of the said agreement which specifically relate with AD matters.<sup>13</sup>

Due to the many effectiveness and enforceability issues attached with this agreement, it was revised through the Kennedy Round 1963, and resultantly reforms in the form of extended and effective binding force of agreement were agreed in Geneva on 30<sup>th</sup> June 1967.<sup>14</sup> The 1967 AD code again went through reforms by the Tokyo Round; consequently, a new Agreement on Implementation of Article VI of GATT was concluded on 30 June 1979.<sup>15</sup> For the first time it provided for the segregation of injury caused by dumped imports from injury caused by other known factors.

GATT 1979 was once again revised in the Uruguay Round, which concluded the ‘Agreement on Implementation of Article VI of the General Agreement on Tariffs

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<sup>12</sup> The General Agreement on Tariffs and Trade (10<sup>th</sup> April 1947)

<[https://www.wto.org/english/docs\\_e/legal\\_e/prevto\\_legal\\_e.htm](https://www.wto.org/english/docs_e/legal_e/prevto_legal_e.htm)> accessed 10 May 2015

<sup>13</sup> Edwin Vermulst, *EU Anti-dumping Law and Practice* (2<sup>nd</sup> edition, Sweet & Maxwell 2010) 6

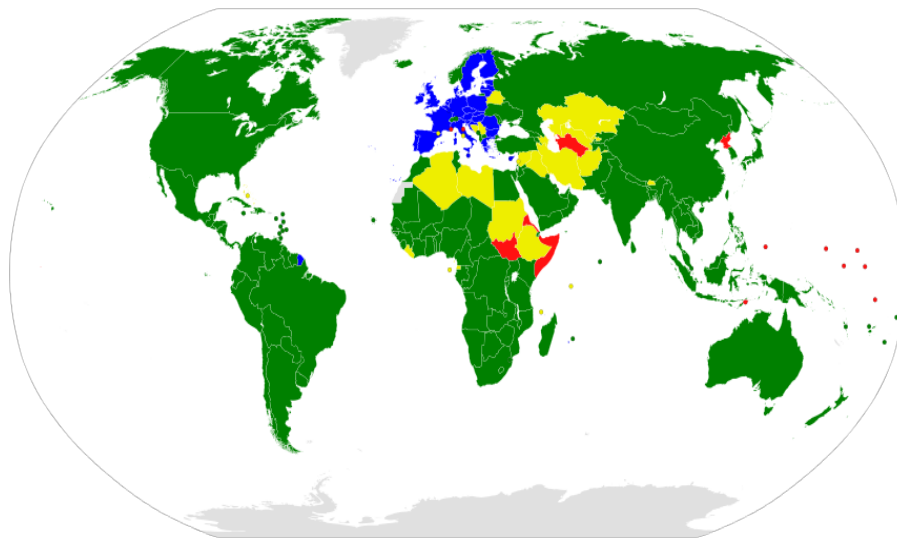
<sup>14</sup> Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (24<sup>th</sup> April 1967) TN.64/NTB/W/19

<[https://www.wto.org/gatt\\_docs/English/SULPDF/91890175.pdf](https://www.wto.org/gatt_docs/English/SULPDF/91890175.pdf)> accessed 10 June 2015

<sup>15</sup> Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (1<sup>st</sup> January 1980) <[https://www.wto.org/english/docs\\_e/legal\\_e/prevto\\_legal\\_e.htm](https://www.wto.org/english/docs_e/legal_e/prevto_legal_e.htm)> accessed 10 June 2015



and Trade 1994’ (Anti-Dumping Agreement).<sup>16</sup> It was included in Annex IA of the WTO Agreement with other multilateral agreements automatically binding on all WTO members. It introduced the provisions regarding verification visits, use of best available information in case of non-cooperation and use of average export price. It is now also called WTO Agreement 1995, and all members of the WTO automatically become signatories of the Agreement; however, 27 of them are observers.



**Figure 1.1: A World Map of WTO Membership**

**Source: Adapted from**

**[https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm)**

- Members
- Members, dually represented by the European Union
- Observers
- Non-members

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<sup>16</sup> The General Agreement on Tariffs and Trade 1994 (“GATT 1994”) (15<sup>th</sup> April 1994)  
<[https://www.wto.org/english/docs\\_e/legal\\_e/gatt47\\_e.pdf](https://www.wto.org/english/docs_e/legal_e/gatt47_e.pdf)> accessed 10 June 2015

## **1.9 DEVELOPMENT OF THE EU ANTI DUMPING FRAMEWORK**

### **1.9.1 ESTABLISHMENT OF THE EU AND EU'S ANTI-DUMPING INFRASTRUCTURE THROUGH TREATIES OF THE EU**

These are two core functional treaties, the Treaty on European Union (originally signed in Maastricht in 1992) and the Treaty on the Functioning of the European Union (originally signed in Rome in 1958 as the Treaty establishing the European Economic Community), which lay out how the EU operates, and there are a number of satellite treaties which are interconnected with them. The treaties provide for the establishment of European institutions including the European Parliament, the Council of Ministers, the Commission and the Court of Justice. They also prescribe the powers, functions, limitations and procedures of these institutions.<sup>17</sup>

These treaties have been amended many times through the last 65 years, however; the consolidated version of the above mentioned two basic treaties is published every year by the EU Commission. The most recent amendment was made in 2007 by the Lisbon Treaty which came into force in 2009.<sup>18</sup> The treaty on the functioning of the European Union discusses in detail the functioning, policies and procedures of the EU. It is divided into seven parts; Articles 205-207 of part 5 deal with the common commercial (trade) policy of the EU. However, part 6 deals with the structure and formation of the institutions of the EU in detail.<sup>19</sup>

Similarly, Article 13 of the Treaty on the European Union provides for the establishment of all European institutions and Articles 21 and 22 deal with the external actions and foreign policy of the EU.<sup>20</sup>

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<sup>17</sup> Damian Chalmers, Gareth Davies and Giorgio Monti, *European Union Law: Text and Materials* (Cambridge University Press 2014) 1-46

<sup>18</sup> Treaty on Functioning of the European Union (Treaty of Lisbon as amended)

<sup>19</sup> Ibid, part 5 and 6

<sup>20</sup> Treaty on European Union, art 21 and 22

**Table 1.1: Transition of European Treaties as from 1948 to Date**

**Source: Developed by the author**

Signed	1951	1954	1957	1965	1975	1985	1986	1992	1997	2001	2007
Enforced	1952	1955	1958	1967	N/A	1985	1987	1993	1999	2003	2009
Document	Paris Treaty	Modified Brussels Treaty	Rome Treaties	Merger Treaty	European Council Conclusion	Schengen Treaty	Single European Act	Maastricht Treaty	Amsterdam Treaty	Nice treaty	Lisbon Treaty

## **1.9.2 DEVELOPMENT OF EU'S BASIC ANTI-DUMPING REGULATIONS**

As far as the EU AD framework and its developments are concerned, the first EU AD rules were framed in 1968, when responsibility for commercial policy and tariffs was substantially transferred from member states to the Union.<sup>21</sup> However, a new set of rules was proclaimed after the succession to Article VI of GATT AD code in 1979.<sup>22</sup> And it was later amended in 1982.<sup>23</sup> The reforms made in 1984 significantly called for the statement of reasons for reaching a particular decision regarding imposition or termination of duties.<sup>24</sup> To prevent the circumvention of AD duties, a controversial procedure was adopted in 1987; which entails the establishment of assembly plants within the Union.<sup>25</sup>

Originally, the EU Court of Justice had jurisdiction regarding AD and anti-subsidy proceedings<sup>26</sup>, but in 1994, these powers were transferred to the General court. The major changes to the WTO Agreement 1995 were reflected in in EU regulation (EC) 384/96.<sup>27</sup> The rules relating to the comparison of prices and calculation of dumping margin were amended through Council Regulation (EC)

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<sup>21</sup> Regulation (EEC) 459/68 of 5 April 1968 on protection against dumping or the granting of bounties or subsidies by countries which are not members of the European Economic Community [1968] OJ L 93

<sup>22</sup> Council Regulation (EEC) No 3017/79 of 20 December 1979 on protection against dumping or granting of bounties or subsidies by the countries which are not members of the European Economic Community [1979] OJ L 339

<sup>23</sup> Council Regulation (EEC) No 1580/82 of 14 June 1982 amending regulation (EEC) No 3017/79 on protection against dumped or subsidised imports by the countries which are not members of the European Economic Community [1982] OJ L 178

<sup>24</sup> Council Regulation (EEC) No 2176/84 of 23 July 1984 on protection against dumping or granting of bounties or subsidies by the countries which are not members of the European Economic Community [1984] OJ L 201

<sup>25</sup> Council Regulation (EEC) No 1761/87 of 22 June 1987 amending Regulation No (EEC) 2176/84 on protection against dumped or subsidised imports by the countries which are not members of the European Economic Community [1987] OJ L 167

<sup>26</sup> Treaty on the Functioning of the European Union (TFEU), art 251-286

<sup>27</sup> Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped or subsidised imports by the countries which are not members of the European Community [1996] OJ L56

2331/96.<sup>28</sup> In 1998, changes were made to facilitate exporters from China and Russia.<sup>29</sup> However, these changes were later amended in 2000 and 2002 along with other amendments in the basic regulation.

The rules regarding simple majority voting in the Council were amended in 2004.<sup>30</sup> With the enlargement of the EU in 2004, the application of existing rules was extended to the new member states. The most current form of the basic regulation is (EC) 1225/2009; which is more consistent and clear as compared to its counterparts, as, for the first time it introduced rules regarding “lesser duty rule” and “community interest clause”.<sup>31</sup>

The regulation applied to dumped imports from WTO signatories and non-signatory countries alike. Although the WTO Agreement provides that special regard shall be given by the advanced countries to the special circumstances of the developing countries, when applying ADD on imports originating from the latter the EU basic regulation does not provide as such. The regulation applies only to products including agricultural products but not to services.<sup>32</sup>

## **1.10 REGULATION (EC) 1225/2009 IN A NUTSHELL: KEY CONCEPTS**

In order to evaluate the investigations as carried out by the Commission, it is necessary to understand the basic concepts of the AD law, as the whole discussion of core chapters of this thesis (Chapters 4,5,6 and 7) involves the debate about the Commission’s and Council’s calculations of NV, EP, dumping margin, Union interest etc.

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<sup>28</sup> Council Regulation (EC) No 2331/96 of 2 December 1996 amending Regulation No (EC) 384/96 on protection against dumped or subsidised imports by the countries which are not members of the European Community [2000] OJ L 257

<sup>29</sup> Council Regulation (EC) No 905/98 of 27 April 1998 amending Regulation No (EC) 384/96 on protection against dumped or subsidised imports by the countries which are not member of European Community [1998] OJ L 128

<sup>30</sup> Council Regulation (EC) No 461/2004 of 27 April 1998 amending Regulation No (EC) 384/96 on protection against dumped imports by the countries which are not member of European Community [2004] OJ L 77

<sup>31</sup> Council Regulation (EC) No 1225/2009 of 30 November 2009 on protection against dumped imports by the countries which are not member of European Community [2009] OJ L 343/51

<sup>32</sup> Above (n 13), 25

According to article 1(1) of EC Regulation 1225/2009 (hereinafter referred as basic regulation), a merchandise is considered to be dumped if its free circulation in the market of importing country causes material damage to the domestic market. A product is considered to be dumped if its EP is less than its NV in the exporting country.<sup>33</sup>

This is the price of exported commodity actually paid by the independent consumer in the ordinary course of business in the exporting country. In case of insufficient sale of the like product or due to the compensatory arrangements between exporter and importer; normal value may be calculated by adding cost of production in country of origin; SG&A costs and adequate profit margin.<sup>34</sup>

Export price is the price paid by retailers, importers or independent buyers when such -product is destined for consumption from exporting country to the Union. However, in order to construct a reliable export price, Article 2(9) of the basic regulation provides for the adjustments of duties, direct or indirect taxes sustained between import and resale.<sup>35</sup>

Article 2(10) asks for a fair comparison to be drawn between NV and EP. It should be drawn at the same level of trade and as much as possible transactions made at the same time should be compared. To draw a fair comparison, wherever it is justified adjustment shall be made to export price or normal value. Any duplication with regard to rebate or discounts shall be avoided while making adjustments.<sup>36</sup>

According to article 2(12) this is the difference or gap by which NV exceeds the EP of the exported product. An average dumping margin may be calculated if dumping margin varies.<sup>37</sup>

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<sup>33</sup> Council Regulation No (EC) 1225/2009, art 1(1)

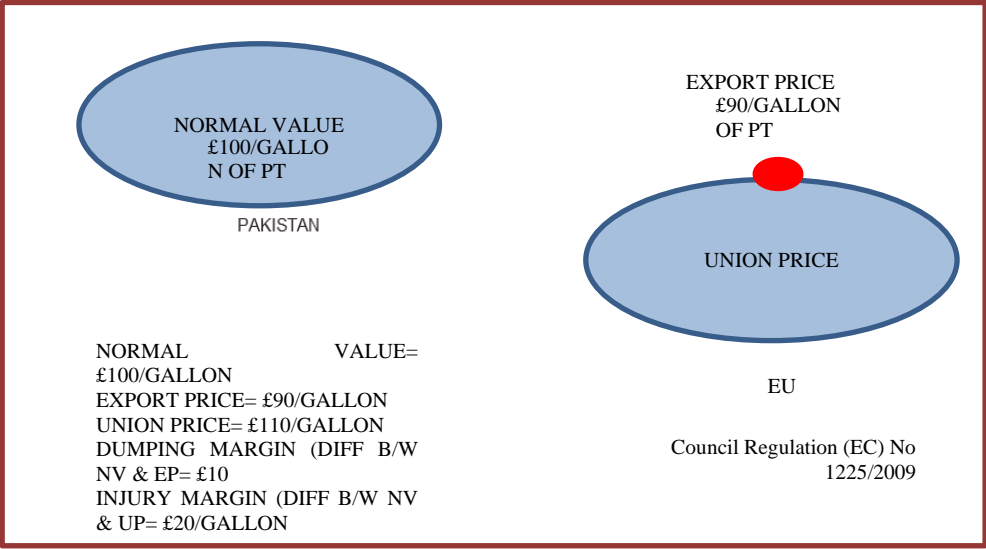
<sup>34</sup> Ibid, art 2(1)

<sup>35</sup> Ibid, art 2(9)

<sup>36</sup> Van Bael and Ballis, *EU Anti-Dumping and other Trade Defence Instruments* (5th Edition, Kluwer Law International 2011) 104

<sup>37</sup> Council Regulation No (EC) 1225/2009, 2(12)

The existence of Dumping margin shall be based on comparison of the weighted average EP and the weighted average NV or on the basis of comparison of individual NV to individual EP on a transaction-to-transaction basis. Nevertheless, if export price differs significantly from transaction to transaction among different purchases or regions, then it may be compared with the average normal value individually.<sup>38</sup>



**Figure 1.2: Explaining the calculation method of dumping margin**

**Source: Developed by the author**

Article 3(1) of the basic regulation requires establishing material injury or material threat of injury being caused to the Union market in order to prove dumping. In this regard quantum of dumped imports, their influence on the prices of like product in the Union and their impact on the Union market shall be analysed.<sup>39</sup>

Injury caused by all other known factors shall be differentiated from the injury caused by the dumped imports. A causal link needs to be established between

<sup>38</sup> Above (n 17)

<sup>39</sup> Council Regulation (EC) No 1225/2009, art 3(1)

alleged injury and alleged dumping. A non-attribution analysis is required by Article 3(7) before conclusion of findings in respect of source of injury; as domestic industry may also deteriorate due to multiple factors; including reduction of demand or production of like product within Union or inflation.<sup>40</sup>

Under Article 5(1) of the basic regulation, a written complaint may be filed by any natural or legal person to the Commission along with sufficient evidence establishing causal link among dumped imports and injury. Nevertheless, no inquiry will be started when Union manufacturers explicitly back up the complaint account below 25% of total manufacture of the product concerned manufactured by the Union industry.<sup>41</sup>

Under Article 6, the Commission will investigate the elements of dumping and injury. Questionnaires will be sent to all interested parties and they are to reply within 30 days. The Commission may seek co-operation or further information from member states whenever it is necessary. The Commission is bound to conclude the investigation within 15 months from the initiation of proceedings under Article 6(9).<sup>42</sup>

A provisional AD duty can be levied if initial enquiry reveals substantial injury and significant threat to the Union industry. Such measures can be imposed not before two months of initiation of proceedings or later than 8 months after initiation. These measures will be imposed as a matter of security which would be released if outcome of the provisional investigation is negative. Article 7(2) provides that such provisional measures should not exceed dumping margin, instead lesser duty rule should be applied. This measure expires after six months of imposition; however it may be further extended for three months.<sup>43</sup>

The Commission possibly will admit suitable undertaking submitted by any trader to review its prices or to terminate exports at lower prices if, after a particular

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<sup>40</sup> Ibid, art 3(7)

<sup>41</sup> Ibid, art 5(1)

<sup>42</sup> Ibid, art 6(9)

<sup>43</sup> Above (n 17)



session of the Advisory Committee, it is contented that the adverse outcome of the dumping is thereby eradicated.<sup>44</sup>

According to Article 9(1), proceeding may be terminated in case of withdrawal of complaint by the complainant. Similarly, it may be terminated after consultation and agreement of the Advisory Council, if, after the investigation, the Commission concludes that imposition of AD duty is unnecessary. Otherwise the Commission will submit proposal of termination in the Council and later will decide about it within one month.<sup>45</sup> Additionally, Article 9(3) provides for the instant termination where it is well-founded that the verge of dumping is below 2 %, quantified as a proportion of the EP.

If the Commission's investigation reveals that the Union market is being significantly damaged by dumped foreign imports, and Union interest calls for intervention, then the EU Council can impose definitive AD duty on the proposal of the Commission after consulting the Advisory Council. The proposal can only be approved by the Council if it is supported by simple majority vote. Such proposal for definitive duties should be approved at least one month before the expiry of provisional measures.<sup>46</sup>

Under Article 9(6) any AD duty levied on imports from manufacturers which were not involved in the investigation but within the meaning of article 17 they have made themselves known will not surpass the weighted average margin of dumping calculated for the exporters in the sample. In this regard, the Commission shall disregard any zero and *de minimis* margins.<sup>47</sup>

A definitive AD measure will terminate five years from its levying or five years from the date of the conclusion of the utmost current review which has covered both dumping and injury, except if it is concluded in a review that the termination would be likely to lead to a perpetuation or reappearance of dumping and injury.

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<sup>44</sup> Ibid, art 8(1)

<sup>45</sup> Ibid, art 9(1)

<sup>46</sup> Ibid

<sup>47</sup> Ibid, art 9(6); Van Bael and Ballis, *EU Anti-Dumping and other Trade Defence Instruments* (5th Edition, Kluwer Law International 2011) 135

The Commission may, where it thinks suitable, conduct verification visits at the premises of exporters, importers, agents, traders and trade associations to verify the accounts and information submitted by the parties regarding their cost of production, profit margin or normal value etc. In the absence of appropriate and well-timed reply, verification visits cannot be conducted.<sup>48</sup>

Under Article 17(1) where a huge number of exporters, importers, complainants, types of products or different type of transaction are involved, the Commission may use a sampling technique, which should be statistically valid, representing maximum production from the country under investigation. In case of non-cooperation by many sampled complainants or exporters, resampling can be done if it does not involve significant difficulty to continued investigation.<sup>49</sup>

Article 18(1) state that in case any interested party denies access to the relevant information, tries to impede or interrupt the investigation process, or provides misleading information; the Commission may disregard such information and may make use of the best available information.<sup>50</sup>

The Commission is supposed to undertake Community interest analysis before any final decision. In this regard the interest of all stakeholders within the Union including importers, manufacturers and consumers shall be analysed and every interested party shall be provided with an opportunity to be heard. AD duty may not be applied even if a product is being dumped in the Union market; if the Commission concludes that such imposition of AD duty is against the public interest at large in the Union.<sup>51</sup>

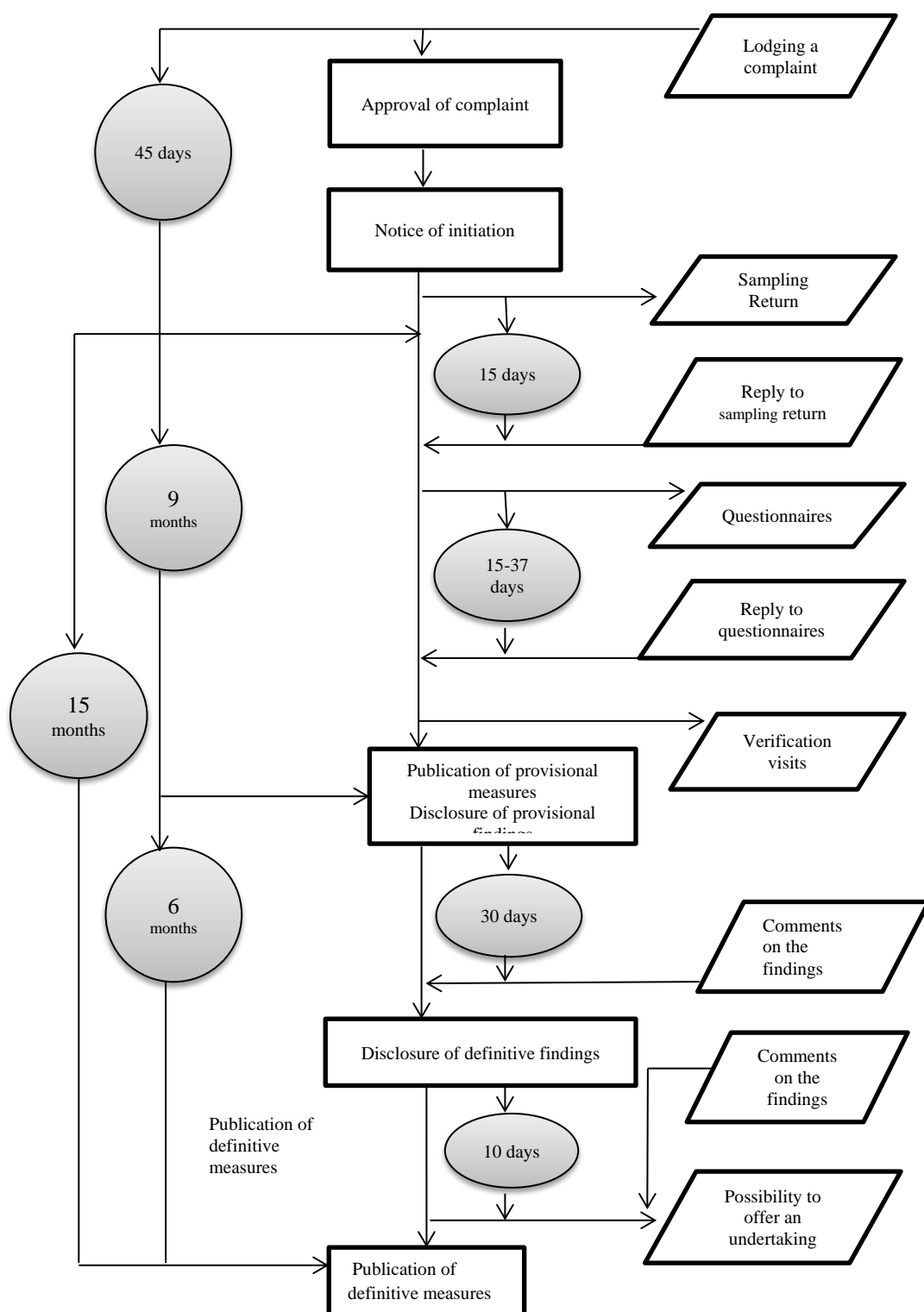
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<sup>48</sup> Council Regulation (EC) No 1225/2009, art 16(1)

<sup>49</sup> Ibid, art 17(1)

<sup>50</sup> Ibid, art 18(1)

<sup>51</sup> Ibid, art 21(1)



**Figure 1.3: Explaining the Course of Investigation in Anti-dumping Cases**

**Source: Adapted from <trade.ec.europa.eu>**

### **1.11 ATTEMPTS TO REFORM EU'S TRADE DEFENSE INSTRUMENT**

In late 2006, European Commissioner for Trade Peter Mandelson initiated a process of consultation with all stakeholders with the aim of possible reforms of the basic regulation. The idea behind the Green Paper was that, because over the last ten years the European trading framework had changed (as many EU producers outsourced their production outside the EU), it was necessary to re-examine how all stakeholders (exporters, importers, consumers and member states) viewed the current trade defence system of the EU.<sup>52</sup>

The main issues to be discussed through these reform consultations included: increased transparency in the EU's trade defence procedures; a reassessment of retailers' and consumers' interest in ADD proceedings; safeguarding the interest of small businesses; and re-evaluation of the criteria for launching AD investigations and implementing measures. The Commission sent questionnaires to and held detailed consultations with all stakeholders including producers, importers and consumers.

However, in 2008 the reform process failed, as it was against the interest of Union producers. According to Bièvre, the Union producers were well-organised and they effectively lobbied with the influential member states to get their interest secured. The importers and consumers, however (being isolated), could not sufficiently make their case and failed in their lobbying activities in Brussels.<sup>53</sup>

Later, in 2012, in order to modernise the EU's trade defence instrument, the Commission held a public consultation which attracted more than 300 replies from all stakeholders. On the basis of this consultation process and suggestions

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<sup>52</sup> Dirk De Bièvre and Jappe Eckhardt, 'Interest Groups and the Failure of EU Antidumping Reform' (Paper for the Workshop 'The EU in the World Economy' Lisbon, 2009) <https://ecpr.eu/Filestore/PaperProposal/943248f2-963c-4eee-bc1d-6cbdc900555b.pdf> accessed on 14th July 2016

<sup>53</sup> Ibid

received, an independent study was finalised which pin-pointed the areas of improvement in the basic regulation.<sup>54</sup>

These suggestions enclosed in the actual proposal included: increased transparency and predictability for businesses concerning the imposition of provisional measures (before their imposition); initiation of AD proceedings on the Commission's own initiative (*ex officio*) without any official complaint by Union industry and finally that a higher level of protection would be granted in certain cases, and the review process would be optimised.<sup>55</sup>

In respect of this proposal, the ordinary process of legislative amendment is continuing within the EU Council and the Parliament. The Parliament completed the first reading of the draft and voted a legislative resolution in April 2014. At that time, the Commission also took note of four points with the view of their adoption, as the legislative procedure advanced.<sup>56</sup>

While interpreting Article 9(5) of the basic regulation the Appellate Body concluded that a general perception is that, the exporting producers operating in the non-market economies are not entitled to the individual treatment. Thus the onus of proof is upon the exporters to establish that they qualify for the individual treatment. According to the Appellate Body<sup>57</sup>, WTO agreements do not provide any basis for such a presumption. Thus the Panel noted that Article 9(5) do not corroborate with the Article 6.10 and 9.2 of the WTO Agreement. Therefore, in

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<sup>54</sup> COM (2013) 191 final, Modernisation of Trade Defence Instruments-Adapting Trade Defence Instruments to the Current Needs of the European Economy (Brussels, 10 April 2013); Panos Koutrakos, *Modern Studies in European Law: EU International Relations Law* (2<sup>nd</sup> Edition, Hart publishing 2015) 377

<sup>55</sup> Ibid

<sup>56</sup> COM (2015) 385 final, 33rd Annual Report from the Commission to the Council and the European Parliament on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities (Brussels 3 August 2015)

<sup>57</sup> WT/DS397/AB/R, Appellate Body Report, European Communities- Definitive Anti-Dumping Measures on Certain Iron or Steel Fasteners from China (Adopted on 15<sup>th</sup> July 2015)  
[https://www.wto.org/english/tratop\\_e/dispu\\_e/397abr\\_e.pdf](https://www.wto.org/english/tratop_e/dispu_e/397abr_e.pdf)

order to fulfil the guiding principles of the Appellate Panel, Article 9(5) was amended accordingly.<sup>58</sup>

Similarly, the amended Article 17 provides that any ADD imposed on imports from manufacturers which were not made part of the sample but they intended to co-operate being the part of sample shall not surpass the weighted average dumping margin calculated for exporters in the sample, regardless of the fact that NV for such traders is calculated in accordance of subparagraph (a) of Article 2(7) or Article 2(1) to (6).<sup>59</sup>

In May 2016, the Commission took some steps to increase transparency in its trade defence investigations and communication with stakeholders. In the trade defence case on hot rolled steel and paper from China, the Commission published an executive summary containing additional information about the complaint. To improve access to information, it will now publish an executive summary of any request for the initiation of a review or fresh investigation. Moreover, the Commission will establish a new online forum improving communication among all stakeholders. These steps are taken in order to increase the transparency of EU trade defence procedures.<sup>60</sup>

## **1.12 EU INSTITUTIONAL FRAMEWORK BREAKDOWN**

### **1.12.1 EU COMMISSION**

This is the executive branch of the Union. It is entrusted with the duty to implement the Treaty and executing Council's decisions.<sup>61</sup> The EU Commission is comprised of 28 Commissioners, at least one from each member state of the

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<sup>58</sup> Regulation (EU) No 765/2012 of the European Parliament and of the Council of 13 June 2012 amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community [2012] OJ L 237/01

<sup>59</sup> Regulation (EU) No 1168/2012 of the European Parliament and of the Council of 12 December 2012 amending Council Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community [2012] OJ L 344/1

<sup>60</sup> European Commission Directorate-General for Trade, 'The Commission Increases Transparency of its Trade Defence Procedures' (News, 19 May 2016)

<<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1500>> accessed 14 July 2016

<sup>61</sup> Article 294, Treaty on the Functioning of the European Union

EU.<sup>62</sup> Commission decisions are adopted by simple majority vote.<sup>63</sup> It is comprised of 49 Directorate-General ('DGs') however; the Directorate-General of trade is responsible for implementing the common commercial policy (CCP). Within this Directorate-General, Directorate H is responsible for implementing the trade defence instrument. They are supposed to work independently and with integrity and their aim is to safeguard the mutual benefit of the Union as a whole.

It does not mean that they should overlook or ignore their national interest altogether instead they are supposed to look at their national interest through the lens of Union interest. A Commissioner can be appointed for a maximum period of five years, and he/she can only be impeached by the EU Court of Justice on the grounds of misconduct.<sup>64</sup> Post Lisbon Treaty the seats of Commissioners have now been divided corresponding to the population of the member countries.<sup>65</sup>

For purpose of the common commercial policy, the Commission is in fact an investigative body, which starts its investigation after the initiation of a complaint. It undertakes the injury analysis and dumping analysis; it can also construct the normal value and calculate the dumping margin. It can conduct verification visits to verify the information submitted to it by interested parties. After conclusion of the proceedings it can terminate proceedings if no evidence of dumping is found; otherwise a provisional duty may be imposed for a maximum period of 15 months.<sup>66</sup> However, under the new rules concerning the mechanisms for control by member states, the EU Commission will also impose definitive measures subject to approval of the committee of the representatives of the member states (discussed in detail in section 1.13).

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<sup>62</sup> Article 245 TFEU

<sup>63</sup> Article 250 TFEU

<sup>64</sup> Article 246 TFEU

<sup>65</sup> Paul Craig and Grainne Burca, *'EU Law Text Cases and Materials'* (Sixth edition, Oxford University Press 2015) 39

<sup>66</sup> *Ibid*, 35

### **1.12.2 COUNCIL OF THE EUROPEAN UNION**

The Council is the political forum/institution of the European Union, where every minister can openly protect its (their country's) interest within the Union through their voting power. Therefore, here, unlike with the Commission, Union interest is looked at through the lens of national interest-and this is often more or less tinted. It sets the basic policies and paradigms of the Union's trade with the rest of the world. The Council is the main legislative body and decision making authority in all major affairs which take decisions by unanimity, qualified or simple majority depending upon the nature of issue.<sup>67</sup>

The Council's secretariat is based in Brussels. It consists of at least one delegate from each member state, the identity of the delegate however, varies as the subject matter of decision changes. Pursuant to entry into force of Regulation (EU) 37/2014, the role of the Council in AD matters is curtailed, as it is substituted by the committee of the representatives of the member states.<sup>68</sup> However, in this committee too, a qualified majority vote is required to impose definitive AD duties, and the member states who abstain from voting will be deemed to have voted yes.

### **1.12.3 THE COMMITTEE OF PERMANENT REPRESENTATIVES**

This Committee is a subsidiary of the Council, which undertakes all the supplementary work for the Council of Ministers. It is comprised of permanent representatives appointed by each member country, and they are based in Brussels. The Committee of permanent representatives is divided into two groups COREPER I (abbreviation of French name) is comprised of deputy permanent representatives who give advice on technical and legal matters; while COREPER II consists of permanent representatives, and they assist ministers in financial, institutional and political matters.<sup>69</sup>

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<sup>67</sup> Article 16(3) TEU

<sup>68</sup> Above (n 13), 5

<sup>69</sup> Ibid, 8



#### **1.12.4 EUROPEAN PARLIAMENT**

These are public representatives directly elected by public vote. They are not members of national parliaments, neither they are answerable to their national governments. In fact they represent the common will of the people of the Union. A member of Parliament is elected for a period of five years. The number of seats is distributed among member states corresponding to their population size. Thus big countries get more seats as compared to the smaller ones.

The EU Parliament can pass or reject the annual budget if it has important reasons. It can influence the Commission, as the appointment of Commissioners is subject to the approval of the EU Parliament. In most matters, while the European Parliament is now a co-legislator with the Council of European Union to the latter, in some cases, the Council is still only required to consult Parliament.<sup>70</sup> It plays a larger role in negotiating trade agreements with third countries. Along with the Council, it is also entrusted with obligation to check if any such agreement is negotiated according to the internal policy of the Union.<sup>71</sup>

#### **1.12.5 THE EU COURT OF JUSTICE**

The Court is comprised of 28 judges one from each member state<sup>72</sup>, along with (originally) eight advocate generals for the assistance of the Court, since 2015, the number of advocate generals has been eleven. The advocates general are duty bound to submit their submission with complete impartiality.<sup>73</sup> The Judges are appointed for a maximum six-year period by the common accord of the governments.<sup>74</sup> The Judges then appoint their president for a renewable period of two years. The court sits in chambers, grand chambers or full chambers. In cases of dismissal of members of the Commission, the court meets in full chamber.<sup>75</sup> However, one proposal of the Lisbon Treaty was that there should be an advisory

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<sup>70</sup> Above (n 65)

<sup>71</sup> Art 207 TFEU

<sup>72</sup> Art 253 TFEU

<sup>73</sup> Art 252 TFEU

<sup>74</sup> Art 253 TFEU

<sup>75</sup> Art 251 TFEU

panel, which should be discussed regarding appointment of judges and advocate generals. Secondly, it proposes to increase the number of advocate generals.

The court is authorised to ensure the implementation of treaties and to interpret them wherever they are ambiguous. Moreover, if the aggrieved parties are not happy with the findings of the Commission or the imposition of definitive measures by the administrative institutions, they can challenge their actions in the General Court (action for annulment), with a possible avenue of appeal to the Court of Justice.<sup>76</sup> A direct action for failure to act may be brought by any institution, member state or individual who has been directly affected by any institution's failure to act.<sup>77</sup> The Court acts as an international court regarding disputes between the states or a member state and the Commission. The court can annul the acts of the Commission and the Council, on the grounds that they lack a suitable legal basis in the applicable treaty.

#### **1.12.6 THE GENERAL COURT**

The General Court (GC) also consists of 28 judges, one from each member state.<sup>78</sup> The judges appoint their president themselves for a period of six years which is renewable. There are no permanent advocate generals in this court, however in particular circumstances any judge may ask to perform the role of advocate general, and in that case his responsibilities will be identical to an advocate general of the Court of Justice.<sup>79</sup> The method of appointment of judges is similar to the appointment procedure of judges of the Court of Justice.<sup>80</sup> It sits in chambers of five judges or a single judge. In 75% cases it sits in chambers of three judges. It may also sit as a grand chamber or full court, if the complexity of the issue demands so.<sup>81</sup>

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<sup>76</sup> Art 263 TFEU

<sup>77</sup> Art 265 TFEU

<sup>78</sup> Art 19(2) TEU

<sup>79</sup> Paul Craig and Grainne Burca, *EU Law Text Cases and Materials* (Sixth edition, Oxford University Press 2015) 59

<sup>80</sup> Above (n 17)

<sup>81</sup> Protocol (No 3) On the Statute of Court of Justice of the European Union [2010] OJ C 83/210, art 50

The GC performs a number of different duties. An Appeal may be filed against a decision of the civil tribunal in the General court. The GC can bring an action of annulment or action of damages if EU institutions, including Parliament and Council, do not perform according to the treaties. It can also take an action under an arbitration clause to resolve a matter between two parties.

More importantly, any aggrieved party can challenge the imposition of provisional or definitive AD duties in front of the GC.<sup>82</sup> An Appeal can be filed in the ECJ within two months of promulgation of a decision by the GC. The appeal is limited only to questions of law and it covers infringement of EU law by the GC, lack of competence of the GC and breach of procedure before it which adversely affects any interested party.<sup>83</sup>

### **1.13 AMENDMENTS TO THE EU INVESTIGATIVE AUTHORITIES' FUNCTIONING POST REGULATION (EU) 37/2014**

The basic regulation divided the powers between the Commission and the Council, whereby the Commission was responsible for imposing provisional measures, while definitive measures were to be approved by the Council on the basis of the Commission's proposal. This approach was, however, amended by Omnibus I Regulation. The reforms of decision-making procedures in the CCP and the said regulation eliminated the Council's role in respect of approval of definitive measures. However, the Commission became more powerful, as it is now responsible for implementing both provisional and definitive measures.<sup>84</sup>

As the Council's and the Advisory Council's roles are curtailed, the member states acquired a more active consultation role after this amendment. In areas, such as, acceptance of undertaking, initiation or non-initiation of expiry reviews, and adoption and extension of suspended measures, the Commission must take

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<sup>82</sup> Art 256 TFEU

<sup>83</sup> Council Decision of 26 April 1999 amending Decision 88/591/ECSC, EEC, Euratom establishing a Court of First Instance of the European Communities to enable it to give decisions in cases when constituted by a single judge [1999] OJ L 114/52

<sup>84</sup> Regulation (EU) 37/2014 of the European Parliament and of the Council of 15 January 2014 amending certain regulations relating to the common commercial policy as regards the procedures for the adoption of certain measures [2014] OJ L 18/1

advice from the Committee of the representatives of the member states, which will decide by simple majority vote of its members.<sup>85</sup>

This Committee acquired a role not only in advisory procedures but also in examination procedures. For adoption of definitive AD measures, termination of AD investigations and for the repeal or maintenance of AD measures after expiry review, the Commission cannot act without the advice of the Committee. In examination procedures, the Committee may block the Commission's move only by qualified majority. Under these circumstances, the Commission can either send a revised proposal for adoption of certain measures, or it may approach the appellate committee.

The appellate committee acting with qualified majority will try to find out the solution in this regard. Sometimes its members may also suggest amendments in the Commission's proposal. The Commission can impose the definitive measures only if the appellate committee delivers a positive opinion or stays silent on the matter. However, if the appellate body delivers a negative outcome, no further action is possible in this regard.<sup>86</sup>

For imposition of provisional AD measures, the Commission must inform the Committee of the representatives of the member states. However, after such imposition, the Commission must submit a report to the Committee. The latter can ask the Commission to repeal the provisional measures by qualified majority vote of its member states. However, in the case of a positive opinion of the Committee, the provisional measures will stay enforced.<sup>87</sup>

The reformed procedure for decision-making has strengthened the role of the Commission in decision-making. Under the previous decision-making procedure, the Commission was required to consult the Advisory Council before imposition of provisional measures, termination of existing measures or initiation of expiry

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<sup>85</sup> Ibid; Panos Koutrakos, *Modern Studies in European Law: EU International Relations Law* (2<sup>nd</sup> Edition, Hart publishing 2015) 377

<sup>86</sup> Above (n 84)

<sup>87</sup> Ibid

review. The role of the Advisory Council has been completely eliminated under the new rules. Similarly, the role of the EU Council is also eliminated, as it was responsible for adopting definitive measures.<sup>88</sup>

The role of the Advisory Council and the EU Council is now more or less performed by the Committee of the representatives of the member states. Member states were already speaking through the EU Council under the previous regime, but under the current decision-making procedures they acquired a more active role. The role of the Council and Parliament is now restricted to scrutiny of the draft measures. The current decision-making procedures strengthened the role of the Commission, thus they offer more concentration of power in a single institution as compared to the previous decision-making policy.<sup>89</sup>

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<sup>88</sup>Ibid; Panos Koutrakos (n 84) 378

<sup>89</sup> Ibid

## **CHAPTER TWO: ANTI-DUMPING DUTIES IMPOSED ON ALL OTHER PAKISTANI IMPORTS EXCEPT TEXTILES: CRITICAL EXAMINATION OF THE EU COMMISSION'S INVESTIGATIONS AND THE JUDGEMENTS OF THE EU COURTS**

### **2.1 INTRODUCTION**

After discussion of research methods employed for this thesis in the previous chapter, the current chapter intends to find the answer of the first research question of this study, i.e. how consistently do EU institutions interpret and implement anti-dumping (AD) law in relation to Pakistan? The discussion about this research question spreads through four chapters (Chapter 4, 5, 6 and 7). The current chapter, however, encloses the examination of AD duties imposed by the Union on all other exports except textiles. Apart from textile products, duties have been mainly imposed upon polyethylene terephthalate and electronic compact fluorescent lamps, while ethyl alcohol escaped the imposition due to the calculation of negative dumping margin (DM). The calculations of normal value (NV), export price (EP) and dumping margin as did by the commission have been cross-checked against the relevant provision of basic regulation and judgements of the EU Courts.

### **2.2 PROVISIONAL MEASURES IMPOSED ON POLYETHYLENE TEREPHTHALATE EXPORTS**

The proceeding was originated due to a complaint lodged in April 2003 by the Association of Plastic Manufacturers in Europe (APME) (the complainant). It was

lodged on behalf of manufacturers' representative of majority, in this case more than 80%, of the total Union produce of polyethylene terephthalate. Notices of launch of proceedings were delivered to all concerned parties.<sup>1</sup> For the purpose of this inquiry, the Commission indicated that sampling would be significant enough to use. Nevertheless, due to the lesser than anticipated number of exporting manufacturers which showed their readiness to cooperate, use of sampling was not considered to be necessary. Questionnaires were sent to all those companies who made them known within a specific time, and to all the involved parties. Furthermore, the Commission conducted verification visits at sampled Union manufacturers and foreign exporters, including two Pakistani exporters.<sup>2</sup>

### **2.2.1 NORMAL VALUE**

The Commission assessed the comparability of the product concerned to the product vended on the national market by the exporters. Then the Commission conducted a 'representative sales' test according to Article 2(2) of Council regulation (EC) 384/96. If sale (of an exporting producer) in the exporting country constitutes at least 5% of its exports to the Union, its sale was considered to be representative.<sup>3</sup>

To decide whether sale of each type of polyethylene terephthalate (PET) at local market was being manufactured in the ordinary course of trade, the percentage of profitable sale (of product concerned) as compared to the overall sale at local market was calculated by the Commission. In circumstances where the weighted average price of that type of PET was equivalent to or over the expense of manufacture and where the trade volume of PET type, sold at a net sales value equivalent to or over the ascertained expense of manufacture, denoted 80% or a greater amount of the aggregate sales volume of that sort, NV was determined on

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<sup>1</sup> Commission Notice of initiation of an anti-dumping proceeding concerning imports of polyethylene terephthalate (PET) originating in Australia, the People's Republic of China and Pakistan [2003] OJ C 120/04

<sup>2</sup> Commission Regulation (EU) No 306/2004 imposing a provisional anti-dumping duty on imports of polyethylene terephthalate originating in Australia, the People's Republic of China and Pakistan [2004] OJ L 52/5

<sup>3</sup> Commission Regulation (EC) No 306/2004, Para 20

the genuine local cost, figured as a weighted normal of the costs of every single local sale of that type made amid the examination period, paying little heed to whether these sales were money-making or not.<sup>4</sup>

In circumstances where the weighted average price of that type was beneath the expense of creation, or where the volume of profitable sales of PET sort constitute under 80% of the aggregate sales volume of that type (of PET), NV was depended on the actual local cost, calculated as a weighted average of prolific sales of that type of PET only, gave that these sales denoted 10% or a greater amount of the aggregate sales volume of that type. Also, a specific type of PET was thought to be sold at the local market in inadequate amounts to give a suitable premise to the foundation of NV, where the volume of beneficial sales of a PET account less than 10% of the aggregate sales volume of that type (PET).<sup>5</sup>

Subsequently, as per Article 2(3) of the fundamental regulation, NV was developed by addition of the assembling expenses of the exported types, accustomed where important, a sensible margin of profit and a sensible amount for selling, general and administrative (SG&A) costs. In this regard, the Commission inspected if the profit gathered by each of the exporting manufacturers concerned on the local market and the SG&A incurred founded reliable data.<sup>6</sup>

As per Article 2(1)<sup>7</sup> of the Council regulation (EC) 384/96, for all types of PET, except one, exported by one of the Pakistani exporting manufacturers, the Commission could create NV on the basis of the prices paid through the normal course of trade by free consumers on the local market. However, constructed normal value was used, followed by Article 2(3) of the basic regulation for the

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<sup>4</sup> Ibid, Para 23

<sup>5</sup> Ibid, Para 24

<sup>6</sup> Ibid, Para 26

<sup>7</sup> Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1996]OJ L 056, art 2 (1)



single PET type where less than 10% of the local sales were in the ordinary course of trade.<sup>8</sup>

The second exporting producer had no domestic sales. Therefore, pursuant to Article 2(1), the NV was constructed based on the prices of the product concerned charged on the local market by the first exporting manufacturer because the sole two exporting producers in Pakistan were linked to each other.<sup>9</sup>

### **2.2.2 EXPORT PRICE**

The export price was determined pursuant to Article 2(8), based upon the prices actually paid or payable because all sales of the product concerned made by the two related Pakistani exporting manufacturers on the Union market were made to unrelated consumers in the Union.<sup>10</sup>

### **2.2.3 COMPARISON**

In order to draw a fair comparison among the NV and the EP due allowance was given in the form of adjustments where necessary as required by Article 2(10) of the Council regulation (EC) 384/96, In all circumstances it was established to be practical, precise and supported by confirmed evidence, appropriate adjustments were granted accordingly.<sup>11</sup>

### **2.2.4 DUMPING MARGIN**

In pursuance to Article 2(11), the weighted average EP of each type (of PET) concerned were compared to the weighted average NV of each type of (PET) exported to the Union.<sup>12</sup>

The comparison demonstrated the presence of dumping in respect of the coordinating trading manufacturers. The provisional DM communicated as a rate

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<sup>8</sup> Above (n 2) Para 43

<sup>9</sup> Ibid, Para 44

<sup>10</sup> Ibid, Para 28

<sup>11</sup> Ibid, Para 30

<sup>12</sup> Ibid, Para 31

of the CIF<sup>13</sup> import price at the Union border has been computed as the weighted average of DM of the two cooperating producers as both producers found to be related with each other. And it was done in line with the Union's policy for related exporting producers. This margin amounts to 14.8%, for both Novatex Ltd and Gatron (Industries). The residual provisional margin was established at the level of the cooperating trader having maximum dumping margin to guarantee the efficacy of measures, since the level of cooperation was high, as there were only two exporting manufacturers of the product concerned in Pakistan.<sup>14</sup>

### **2.2.5 INJURY**

The scale of imports from the markets concerned started to penetrate the Union market at a substantial scale from 2002, resulting in price undercutting on the Community market. The Union industry lost market share and its financial stability was again threatened as reflected in its poor financial results.<sup>15</sup>

Under the significance of Article three of Council regulation (EC) 384/96, it is however for the time being decided that the Union market has sustained material injury.<sup>16</sup> The Commission considers all relevant factors to reach a conclusion in this regard: it includes scale of actual margin of dumping, retrieval from the previous dumping, investments and ability to raise capital, sales volume, return on investment, market share, profitability and cash flow and growth and average unit prices in the EC.<sup>17</sup>

### **2.2.6 CAUSATION**

The Commission established that there is a causal link amongst dumped imports and the alleged injury caused to the EU industry. The same fact is evident from the increase in market share and profitability of the dumped imports which later caused price undercutting of the Union industry. Moreover, there is a striking

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<sup>13</sup> Cost, insurance and freight

<sup>14</sup> Above (n 2) Para 48

<sup>15</sup> Ibid, Para 146

<sup>16</sup> Council Regulation (EC) No. 384/96, art 3

<sup>17</sup> Above (n 2)

concurrence in time among the sharp rise of dumped imports and the decline of the monetary condition for the Union industry.<sup>18</sup>

The investigation has also shown that it cannot be excluded that some of the imports from Taiwan and the Republic of Korea also have contributed to the injury. However, there is no indication that the probable influence of these imports is so significant that it can break down the causal link between dumped imports from Australia, Pakistan and China, and the injury borne by the Union industry as a result of dumped imports. No other factors have been put forward or found which could have affected in a significant way the condition of the Union industry.<sup>19</sup>

A provisional AD duty was thereby levied on imports of poly (ethylene terephthalate), classified under combined nomenclature (CN) code 3907 60 20 and originating in Australia, China and Pakistan. The provisional duty rate was 128 (EUR/t) for Novatex Ltd, Gatron (Industries Ltd and all other Pakistani companies.<sup>20</sup>

### **2.2.7 ANALYSIS**

The review of the investigation revealed that the complaint was being supported by Community producers representing 80% of the total production of polyethylene terephthalate. The levels of support, however, were significantly high otherwise, Community producers having 25% share of the Community industry and Community producers representing 50% of the Community industry, respectively, are sufficient for the initiation and continuation of a complaint. It is, however, noted that reference is made only to the Community manufacturers, as Union manufacturers representing at least 25% of total Union production can initiate a complaint. It means that other stakeholders, such as importers or

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<sup>18</sup> Ibid, Para 177

<sup>19</sup> Ibid, Para 178

<sup>20</sup> Ibid

consumers, do not have any right to lodge a complaint if they are suffering from alleged dumped imports.<sup>21</sup>

The EU Court of Justice established in Case C-105/90<sup>22</sup> that it is apparent both from the wording and the scheme of that provision that it is the price actually paid in the ordinary course of trade which must, as a matter of priority, be taken into consideration in principle to establish the normal value. Under Article 2(3) of the basic regulation, that principle may be derogated only when such sales are insufficient or do not permit an appropriate comparison or when there are no sales of the like product in the ordinary course of trade. However, Vermulst argues that alternative ways of calculation of NV tend to create higher and non-representative domestic prices as compared to the actual price paid on the local market.<sup>23</sup>

The EU Courts held in Case C-393/13<sup>24</sup> and Case T-304/11<sup>25</sup> that in order to establish whether EU market is being dumped by foreign imports, the ordinary course of trade is a notion which is related to the character of the sale itself and not the price of the product. According to Article 2(4), sale of the like product in the local market of the manufacturing country at prices less than unit manufacturing costs plus SG&A costs may be disregarded in determining normal value and such sale can be considered as not in accordance of ordinary course of trade only if it met with following three conditions:

1. Such non-profitable sale should be made in an extended period of time (minimum six months and maximum one year);
2. It should be in substantial quantities;
3. It should be sold at prices which could not repay the production cost of product concerned within an adequate time (prices above the weighted average production costs during investigation period but which are below

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<sup>21</sup> Johannes Beseler and Neville Williams, *Anti-dumping and Anti-subsidy Law: The European Communities* (Sweet & Maxwell 1986) 177

<sup>22</sup> Case C-105/90, *Goldstar Co. Ltd v Council of the European Communities v Council of the European Union* [1992] ECR I-0067, Para 31

<sup>23</sup> Edwin Vermulst, *The WTO Anti-Dumping Agreement* (Oxford University Press 2005) 35-37

<sup>24</sup> Case C 393/13 *Council of the European Union v Alumina d.o.o.* [2014] OJ C 274, Para 25-32

<sup>25</sup> Case T 304/11 *Alumina d.o.o. v Council of the European Union* [2013] OJ C 226, Para 27-30

cost at the time of sale shall be considered as price providing for recovery of production cost within reasonable time).

It is not clear, under which circumstances the investigative bodies can depart from the one-year rule. However, in all circumstances, the minimum time in which sale below cost cannot be regarded as being made outside the ordinary course of business is six months.<sup>26</sup>

Sales below unit cost will only be considered substantial if it constitutes at least 20% of total sales volume of the product concerned in local market or third country's market and when it is established that the weighted average selling price is lower than the weighted average production cost. Van Bael and Bellis are critics of this methodology, and they argue that this 20% may tend to inflate the character of artificial dumping.<sup>27</sup>

It was also held in Case C-76/00<sup>28</sup>, Case C-105/90<sup>29</sup> and Case T-34/98<sup>30</sup> that derogation from actual price paid by consumers on the domestic market is possible in two cases, Firstly, if there are compensatory arrangements between exporter and importer which make normal value unreliable. In the second place, under Article 2(4) of the basic regulation states that while determining the NV, the price of the product paid in third independent country or the NV paid by the independent consumers in the local market of the manufacturing country can be disregarded; only if, such normal value is lesser than its average manufacturing costs. To establish the sales below production cost, it must also be established that, such sales do not provide for recovery of production expenses within a reasonable time; such sale is made in substantial quantity and it has been made in an extended time period.

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<sup>26</sup> Wenxi Li, 'Antidumping Law of the WTO/GATT and the EC. Gradual Evolution of Antidumping Law in Global Economic Integration' (2001) Juristförlaget i Lund 71

<sup>27</sup> Van Bael and Ballis, *EU Anti-Dumping and other Trade Defence Instruments* (5th Edition, Kluwer Law International 2011) 57

<sup>28</sup> Case C-76/00 *P: Petrotub SA and Republica SA v Council of the European Union* [2003] ECR I-00079, Para 84

<sup>29</sup> Case C-105/90, *Goldstar Co. Ltd v Council of the European Communities v Council of the European Union* [1992] ECR I-0067, Para 13

<sup>30</sup> Joined Cases T-33/98 and T-34/98, *Petrotub SA and Republica SA v Council of the European Union* [1999] ECR II-3841, Para 73-75

However, it is noted that, while establishing that profitable sale representing less than 80% of the total domestic sale of the product concerned cannot be considered as sale made in the ordinary course of trade, the Commission has not explicitly explained in the recitals of the Regulation whether all three above mentioned conditions as provided by Article 2(4) to establish the ordinary course of business were met? Therefore, it could be established that the EU Commission in its regulation 306/2004 could only establish that the non-profit able sale was in substantial quantity exceeding more than 20% of the total sale.

However, the Commission has failed to explain whether such non-profitable sale was continued for a substantial period (at least six months). Similarly, the EU Commission also failed to explain whether; such non-profitable sale provides for the recovery of cost of production within a reasonable time, as price below cost at the time of sale but above the average cost of production provides for recovery of cost within a reasonable time. Didier argues that the onus of proof should lie on the investigating bodies to prove that all above-mentioned three conditions are met, to establish that the sale is made outside the ordinary course of trade. Consequently, many times the investigative bodies put that burden of proof on the producers.<sup>31</sup>

The Commission may have taken all three tests to establish the ordinary course of trade, but if it has done so, it should be explained to the parties by its Regulation (EC) 306/2004, as the investigative bodies are expected to provide a full and adequate statement of reason for their calculations and decisions as established by EU Courts in Case T-558/12<sup>32</sup> Case T-310/12<sup>33</sup> and Case T-401/06<sup>34</sup>. As it will help the interested parties to understand the reasons of the measures thus they will be in appropriate position to contest and defend their rights. Although, the

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<sup>31</sup> Pierre Didier, 'The WTO Anti-Dumping Code and the EC Practice- Issues for Review in Trade Negotiations' (2001) 35 (1) Journal of World Trade 35, 41

<sup>32</sup> Joined Cases T- 558/12 and T- 559/12, *Changshu City Standard Parts Factory, v Council of the European Union* [2015] OJ C 46, Para 121

<sup>33</sup> Case T 310/12, *Yuanping Changyuan Chemicals Co. Ltd, v Council of the European Union* [2015] OJ C 273, Para 195

<sup>34</sup> Case T-401/06, *Brosmann Footwear (HK) Ltd and Others v Council of the European Union* [2010] ECR II-00671, Para 180

institutions are not expected to release all relevant facts and points of law but the adequacy of statement of reasons will be assessed as per the specific circumstances of each case.

Furthermore, if the Commission had not established the fulfilment of all three conditions, then it is a manifest error of assessment on the part of the Commission, as under the meaning of Article 2(4) all three conditions must be met in order to establish the ordinary course of trade. However, the conclusion that sale is not made in the ordinary course of business cannot be drawn if any one of the conditions could not be met. Apart from that it could be concluded that rest of the calculation of the EU Commission regarding export price, dumping margin, comparison, causation and calculation of injury are significantly explained and reasoned by the Commission.

Moreover, this dissertation objects to the criteria of establishment of 'substantial amount of sale below cost' as provided by Article 2(4) of the basic regulation. It suggests that sales underneath unit cost should be thought to be made in significant amounts when it is established that the weighted average selling price is beneath the weighted normal unit price, or that the volume of sales beneath unit cost is above 20% of sales being utilised to establish normal value. The researcher, however, objects to the discretionary power given to the Commission to make use of either of the two mentioned criteria (which are exclusively different) to establish the sale below cost in substantial quantity at the domestic market.

It means that if sale below cost represents less than 20% of the total sale, then the Commission, having recourse to the alternative option, can establish so by concluding that the average sale price is below the average cost of production, or vice versa. However, the author recommends that either there should be only one criterion to adjudge the substantial quantity of sale below the cost of production, or that the Commission should apply both thresholds simultaneously; failing any of them should lead to a negative result regarding 'substantial quantity' check. This will bring consistency and conformity in the Commission's findings about

sale in the ordinary course of business; otherwise the choice of method available to the Commission may tend to manoeuvre the outcome of the investigation.

The analysis of current and other investigations discussed in Chapters Two to Five reveal that the basic regulation has purposely left many substantial issues be decided by the Commission. The use of these discretionary powers has been pinpointed and examined within their context as they come across in this thesis. The frequent use of these discretionary powers by the Commission tends to lead to inconsistency and lack of transparency in the EU's AD proceedings.

Vermulst noted two major problems associated with lack of transparency. Firstly, it grants excessive discretionary powers to the EU Commission, which being an administrative body is the only institution having access to the factual context of cases. Secondly, it enables leaks and abuse. For example, information about the complaint is often leaked even before initiation of proceedings. He has observed some important instances of lack of transparency of EU procedures, which include: complaints are treated as confidential until initiation; only interested parties can have access to questionnaires; there is no public access to non-confidential files; non-confidential questionnaire responses are often vague and meaningless; verification reports are not provided to interested parties; hearings are *ex parte*.<sup>35</sup>

Similarly, when disclosure is provided, calculation methods of dumping margin etc. are removed, and the Commission's guidelines about the application of ADD are internal, and thus considered confidential. Vermulst's analysis makes clear some of the major transparency issues relating to the basic regulation. But as it is established by other researchers, including Van Bael and Bellis, transparency and consistency in the EU's anti-dumping framework or any other national AD framework can only be ensured by tightening some of the vague provisions

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<sup>35</sup> Edwin Vermulst, 'The 10 Major Problems with the Anti-Dumping Instrument in the European Community' (2005) 39(1) Journal of World Trade 105, 106; Andre Sapir, 'Some Ideas for Reforming the Community Anti-Dumping Instrument' (2006) <[http://trade.ec.europa.eu/doclib/docs/2006/august/tradoc\\_129815.pdf](http://trade.ec.europa.eu/doclib/docs/2006/august/tradoc_129815.pdf)> accessed 30<sup>th</sup> June 2016



(specifically related to calculation of NV, DM and like product) of the WTO Agreement.

The lack of transparency in the EU's AD procedures is also felt by some individuals within EU institutions, and they have called for reforms in basic regulation. For example, in 2006, European Commissioner for Trade Peter Mandelson's attempt failed due to lack of support from Union industry and some member states.<sup>36</sup> Similarly, in 2013 the Commission proposed to modernise the EU's trade defence instrument,<sup>37</sup> which is still going through ordinary legislative procedure, as in April 2014 the EU Parliament voted a legislative resolution and thus closed its first reading.<sup>38</sup> However, in May 2016 the Commission pledged to increase transparency as far as it extends to publication of executive summaries of information about complaints.<sup>39</sup>

However, Wenig advocates the transparency of the EU's anti-dumping instrument, as he claims that despite the fact that the EU is the largest trading entity in the world, its anti-dumping-related investigations have rarely been challenged in the WTO. He claims that the majority of researchers criticising the EU's trade defence framework only evaluate it from an exporter's perspective. However, the Union institutions are under obligation to confirm balance of interest while using the trade defence instruments.<sup>40</sup>

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<sup>36</sup> Dirk De Bièvre and Jappe Eckhardt, 'Interest Groups and the Failure of EU Antidumping Reform' (Paper for the Workshop 'The EU in the World Economy' Lisbon) <https://ecpr.eu/Filestore/PaperProposal/943248f2-963c-4eee-bc1d-6cbdc900555b.pdf> accessed on 14th July 2016

<sup>37</sup> COM (2013) 191 final, Modernisation of Trade Defence Instruments-Adapting Trade Defence Instruments to the Current Needs of the European Economy (Brussels, 10 April 2013); Panos Koutrakos, *Modern Studies in European Law: EU International Relations Law* (2<sup>nd</sup> Edition, Hart publishing 2015) 377

<sup>38</sup> COM (2015) 385 final, 33rd Annual Report from the Commission to the Council and the European Parliament on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities (Brussels 3 August 2015)

<sup>39</sup> European Commission Directorate-General for Trade, 'The Commission Increases Transparency of its Trade Defence Procedures' (News, 19 May 2016) <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1500> accessed 14 July 2016

<sup>40</sup> Harald Wenig, 'The European Community's Anti-Dumping System: Salient Features' (2005) 39 (4) *Journal of World Trade* 787, 788

Another significant factor which makes the EU's AD system consistent and transparent is the scrutiny of proposed measures through three-layer control: Internal Commission control (by 28 member states) in Brussels, European Courts in Luxembourg and WTO Panels in Geneva. However, analysis of the investigations relating to Pakistan, as discussed in this thesis, reveals that sometimes the EU institutions concluded diverging outcomes.

### **2.3 IMPOSITION OF DEFINITIVE DUTY BY THE COUNCIL REGULATION (EC) NO 1467/2004**

The two associated exporting manufacturers made entries taking after the levying of provisional AD measures, in which they asserted that they ought not to have been viewed as two separate but related companies, but instead in perspective of their relationship as an extraordinary trading manufacturer, and that subsequently only one dumping margin ought to be calculated. This solicitation was deeply analysed on the premise of the contentions created by these exporting manufacturers ensuing to the provisional measures.<sup>41</sup>

It was found that the specific attributes of the relationship between the companies concerned and the nearby interlinks in their operation was such as to differentiate their position from the normal circumstance of two related companies. Specifically, record was taken of the extremely critical money related and different connections between the two trading makers, the fact that they sell the concerned product under the same brand name, the way that they have the same regulatory premises and association and a marketing division.<sup>42</sup>

In addition, they share generally the same staff individuals and directors, and have common manufacturing arrangement. The combination of every one of these

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<sup>41</sup> Council Regulation (EC) No 1467/2004 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of polyethylene terephthalate originating in Australia, the People's Republic of China and terminating the anti-dumping proceeding concerning imports of polyethylene terephthalate originating in Pakistan and releasing the amounts secured by way of the provisional duties imposed [2004] OJ L 271/1

<sup>42</sup> Ibid, Para 24

components is esteemed adequate to consider that under these specific circumstances the circumstance of the two exporting manufacturers' warrants that they regarded as a one trading company in the Pakistani PET business, as opposed to as two separate organizations. In this way, in perspective of every one of these components, it was viewed as that the claim ought to be acknowledged.<sup>43</sup>

The Council, however, confirmed the calculations as done by the EU Commission about export price and determination of injury, as none of the Pakistani exporters challenged this calculation. However, the Council reviewed and accordingly amended the Commission's calculations about normal value and dumping margin.<sup>44</sup>

### **2.3.1 NORMAL VALUE**

Within the meaning of Article 2(2), the Commission first determined, for the unique exporting manufacturer, if its entire local sales of the concerned product were representative. In accordance with the said Article, local sales were measured representative, where the entire national sales size of each exporting manufacturer was found to be at minimum 5% of its entire export sales volume to the Union. The Commission later figured out those types of PET; sold domestically by the unique exporting producer that were openly analogous to the types (of PET) vended for export to the Union, and had overall representative domestic sales. An examination was moreover made to develop whether the national sales of each kind of PET could be seen as having been made in the customary course of business.<sup>45</sup>

For the three PET sorts whose local sales were observed to be not representative, constructed normal value (NV) was utilized, according to Article 2(3) of the Council regulation (EC) 384/96. For two sorts of PET traded by the manufacturing exporter, the Commission could calculate NV taking into account

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<sup>43</sup> Council Regulation (EC) No 1467/2004, Para 24

<sup>44</sup> Ibid

<sup>45</sup> Ibid, Para 26

the prices paid or payable in normal circumstances by independent consumers on the local market as provided by Article 2(1).<sup>46</sup>

### 2.3.2 ANALYSIS

It is found that the Commission incorrectly considered a single company as a separate albeit related company, despite the fact that they share the same marketing division as well as an administrative premises and organisation. Such manifest error of assessments is apparently improbable, especially where the exporters are fully cooperating and information submitted by them could be verified by verification visit. However, following the complaint by the exporter, it was validly rectified by the Council accordingly.

The judgements of Case-76/98<sup>47</sup> suggest that the opening words of Article 2(3) (b) of the regulation state that for the purpose of calculation of normal value, the Community institutions are required to have recourse to the latter two methods (construction of NV) in case the domestic sale of the product concerned in the market of the exporting country could not meet with the ordinary course of trade criteria. Stewart contends that the purpose of construction of NV should be to assess the actual domestic price of a product which has been assessed under normal market conditions, or if the transaction was ordinary.<sup>48</sup>

This dissertation finds that the method of calculation of normal value as applied by the Commission in its provisional regulation was inconsistent with the method applied by the Council in its definitive regulation. As five different types of PET were involved in the investigation, the Commission however calculated normal value of two types of PET on the basis of actual price paid at the domestic market, as according to the conclusion drawn by the Commission, the sale of these three types of PET was not found to be representative of its export. However, the sale

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<sup>46</sup> Ibid, Para 31-33

<sup>47</sup> Joined Cases C-76/98 P and C-77/98, *Ajinomoto Co., Inc. and The NutraSweet Company v Council of the European Union and Commission of the European Communities* [2001] ECR I-3225, Para 37

<sup>48</sup> Terence Stewart, *The GATT Uruguay Round: A Negotiating History* (Kluwer Law and Taxation Publishers 1993) 1554

of two types of PET was found to be in the ordinary course of trade; therefore their NV was calculated based upon the actual price paid by the consumers in the domestic market. Vermulst argues that the ordinary course of trade test should be carried out on the product as a whole; it should not be divided into different types to carry out the ordinary course of trade test upon them individually.<sup>49</sup>

On India's appeal against the practice of 'zeroing' (in the bed-linen case), the Appellate Body upheld the findings of the Panel by ruling that the Commission's practice of categorising the bed-linen products under investigation into subgroups of models or types was impermissible under Article 2.4.2 of the Agreement.<sup>50</sup>

However, it was established by the General Court in Case T-385/11<sup>51</sup> that the EU institutes acquired extensive choice in the determination of what may be regarded as a slightly modified like product, and review by the EU Judicature is confined to ascertaining whether the procedural directions have been obeyed. In the context of an AD investigation, where the product concerned contains a wide range of goods which have considerable differences with regard to their characteristics and prices, it may prove necessary to group them under categories which are more or less homogeneous. The purpose of that grouping is to allow for a fair comparison between comparable products, and thereby to avoid an incorrect calculation of the dumping and injury margins owing to unsuitable comparisons.<sup>52</sup>

The Commission, however, omitted to pin point the names of three types of PET whose sale was not found to be in ordinary course of business. For the clarity of all stakeholders, including the importers, exporters and local manufacturers, the Commission's statement in this regard should have been clearer.

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<sup>49</sup> Edwin Vermulst, *The WTO Anti-Dumping Agreement* (Oxford University Press 2005) 168

<sup>50</sup> Simon Lacy, 'The Bed Linen Dispute, India Challenges the EC's Implementation of the WTO Anti-Dumping Agreement' (2001) <<http://ssrn.com/abstract=1135128>> accessed 10 January 2015

<sup>51</sup> Case T 385/11, *BP Products North America Inc. v Council of the European Union* [2014] OJ C 282, Para 96

<sup>52</sup> Council Regulation (EC) 397/2004

The EU Courts established in Case T-192/08<sup>53</sup> Case T-401/06<sup>54</sup> that under Article 253 EC the statement of reasons must show unmistakably and clearly the thinking of the EU authority which approved the challenged measure, to illuminate the concerned parties of the legitimisation for the measure embraced, and in this way to empower them to defend their rights, and the Courts of the European Union to exercise their powers of review. Obligation to state reasons is a procedural requirement which should be distinguished from the question that if they are correct and adequate.<sup>55</sup>

Moreover, the representative sale of some types of PET out of all four was not found to be in the ordinary course of trade, as allegedly their profitable sale was found to be less than 80% of total sale hence, their NV was based on average of all profitable transactions only while ignoring the non-profitable sale. It may be contended that for clarity of investigation the EU Commission should clearly state the number of types of PET whose sale was found to be in the ordinary course of trade and vice versa.

Moreover, the Commission calculated normal value of four types of PET on the basis of actual price paid on the domestic market, while normal value of one type of PET was constructed (by adding SG&A costs, production cost and reasonable profit) in accordance with Article 2(3) due to its insufficient domestic sale.

On the other hand, in regulation imposing definitive dumping duty, the Council calculated normal value of only two types of PET on the basis of actual price paid by consumers in the domestic market. The normal value of the remaining three types of PET was calculated in accordance with Article 2(3) by adding average SG&A costs, production cost and a reasonable amount of profit margin, as their sale was found to be insufficient, constituting less than 10% of exports of the same product to the Union. Therefore, the calculations of both institutions

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<sup>53</sup> Case T-192/08, *Transnational Company 'Kazchrome' AO and ENRC Marketing AG v Council of the European Union* [2011] ECR II-07449, Para 256

<sup>54</sup> Case T-401/06 *Brosmann Footwear (HK) Ltd and Others v Council of the European Union* [2010] ECR II-00671, Para 197

<sup>55</sup> Case C-66/02, *Italy v Commission of the European Union* [2005] ECR I-10901, Para 26

regarding number of PET having insufficient sale at the domestic market were found to be inconsistent with each other.

Vermulst found that, for 'like product' assessments, the Commission divides the product concerned into specific product control numbers (PCNs). It then calculates individual injury margin and dumping margin for each PCN. There is nothing wrong with this methodology as far as it goes to bring more accuracy in calculations. The commission tries to compare identical models instead of using similar models along with necessary adjustments, and it applies 5 % and 20 % below cost rule to each PCN. Furthermore, it rarely makes use of NV paid in another identical third country. Thus, NV is constructed for each PCN separately.<sup>56</sup>

These calculations of constructed normal value involve a variety of discretionary elements and choices. Additionally, calculation of reasonable profit margin is complicated, and highly vulnerable to arbitrary decision. Consequently, CNV sometimes prove to be artificial and non-representative of the actual price paid by customers in a national market.<sup>57</sup>

However, the Commission's discretionary powers are not unlimited instead they are subject to certain legal rules, in this case the basic regulation. The more detailed and comprehensive are the legal provisions of the basic regulation more confined are the Commission's discretionary powers. Thus, detailed rules related to the construction of normal value will curtail their arbitrary use.<sup>58</sup>

Moreover, according to the WTO agreement, where average SG&A costs of other producers would be used, it includes their SG&A costs both in profitable and unprofitable transactions, falling outside the ambit of ordinary course of trade.

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<sup>56</sup> Edwin Vermulst, 'The 10 Major Problems with the Anti-Dumping Instrument in the European Community' (2005) 39(1) *Journal of World Trade* 105, 108

<sup>57</sup> Ibid

<sup>58</sup> Barbara Nastoll, 'EU Anti-Dumping Law, Imports from China and treatment of Non-Market economy countries: Brosmann, Grunwald and Zhejiang Xinan' (2013) 50 *Common Market Law Review* 265, 275

Therefore, use of only profitable transactions for this purpose would be against the law.<sup>59</sup>

The author however concludes that it is the application of different methodologies to calculate normal value applied by the Commission and the Council that leads to the calculation of highly varying dumping margin (14.8% of the export price calculated by the Commission, 1.6% i.e. below the *de minimis* as calculated by the Council) by both institutions for the same trader. One possible reason for this variation may be the calculation (by the Commission) of normal value for some types of PET based on an average only of profitable transactions, while completely ignoring the non-profitable ones. However, the positive aspect of this investigation is that the error of calculation regarding normal value was later rectified by the Council, and the duties paid by Pakistani traders in terms of provisional measures released.

## **2.4 IMPOSITION OF PROVISIONAL AD DUTY ON PAKISTANI POLYETHYLENE TEREPHTHALATE**

### **2.4.1 INITIATION**

The investigation was started following a complaint was lodged by the Polyethylene Terephthalate Committee of Plastics Europe (the complainant). The complaint was made on behalf of manufacturers in lieu of a majority of Union industry, in this investigation above than 50%, of the total Union, making certain polyethylene terephthalate. The complaint enclosed significant proof of dumping of the product concerned importing from Iran, United Arab Emirates and Pakistan.<sup>60</sup>

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<sup>59</sup> Henrik Andersen, *EU Dumping Determinations and WTO Law* (Kluwer law International 2009) 164

<sup>60</sup> Commission Notice of initiation of an anti-dumping proceeding concerning imports of certain polyethylene terephthalate originating in Iran, Pakistan and the United Arab Emirates [2009] OJ C 208/08, Para 2



In pursuance to Article 17 of the primary regulation, and in view of the apparent large number of Union manufacturers and importers, sampling was proposed in the notice of initiation of investigation issued to the concerned parties. Based on the information obtained from the co-operating Union producers, the Commission selected a sample of five Union producers constituting 65% of the sales by all cooperating Union producers.<sup>61</sup>

#### **2.4.2 PRODUCT CONCERNED AND LIKE PRODUCT**

The product concerned is polyethylene terephthalate being imported from Iran, Islamic Republic of Pakistan and the UAE currently falling within CN code 3907 60 20. Since this grade of PET is a homogeneous product, it was not further subdivided into different product types.<sup>62</sup>

The investigation showed that the PET manufactured and sold in the EU by the Union industry, and the PET manufactured and vended on the local markets of the United Arab Emirates, Pakistan and Iran and exported to the Union have essentially matching basic chemical and physical features, and similar basic usages. According to Article 1(4)<sup>63</sup> of the regulation, they are hence provisionally considered to be similar.<sup>64</sup>

#### **2.4.3 NORMAL VALUE**

The domestic sales of the sole Pakistani producer were considered sufficiently representative during the investigation period, as the whole volume of such sales constituted no less than 5% of its aggregate volume of export sales of the concerned product to the EU. Since the profitable sales constituted above 20% of the total domestic sale of the concerned product in the manufacturing country's market; therefore, within the meaning of Article 2(4) local sale was considered to

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<sup>61</sup> Commission Regulation (EU) No 472/2010 imposing a provisional anti-dumping duty on imports of certain polyethylene terephthalate originating in Iran and the United Arab Emirates [2010] OJ L 134/4

<sup>62</sup> Ibid, Para 12

<sup>63</sup> Commission Regulation (EC) No 1225/2009 on protection against dumped imports from countries not members of the European Community [2009] OJ C 343/51

<sup>64</sup> Commission Regulation (EU) No 472/2010, Para 14

be in accordance with ordinary course of trade. Hence, NV was computed on the premise of average of all local sale prices of the like item in domestic market.<sup>65</sup>

#### **2.4.4 COMPARISON**

The sole exporting manufacturer in Pakistan exported the product concerned specifically to free consumers in the Union. As per Article 2(8) of the primary regulation, EP was thus determined on the premise of the costs factually paid by these non-related clients for the product subject to investigation. The NV and the EP of the sole exporting manufacturer were compared. Due stipend by mean of adjustments was made to accommodate variations influencing costs and price comparability with the end goal of guaranteeing a reasonable comparison between the EP and the NV.<sup>66</sup>

#### **2.4.5 NEGATIVE DUMPING MARGIN AND TERMINATION OF INQUIRY**

Pursuant to Article 2(11) and (12) of the Council regulation (EC) 384/96, for the purpose of calculation of dumping margin for sole Pakistan exporter involved, weighted average export price was compared with the weighted average normal value. Adequate adjustments were granted where different factors were affecting the price comparability. The provisional dumping margin for the sole Pakistani exporting manufacturer, Novatex Limited, was calculated at the rate of 1.5 % of the export price, i.e. below *de minimis* in the sense of Article 9(3) of the primary regulation. Later it was further reduced to 0.6% of the export price.<sup>67</sup> Therefore the investigation was terminated, and the amounts held by way of the provisional AD duty levied were released.

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<sup>65</sup> Ibid, Para 27-29

<sup>66</sup> Ibid, Para 31-32

<sup>67</sup> Ibid, Para 33-35

## 2.4.6 ANALYSIS

The EU Courts in Case T-423/09<sup>68</sup> Case T-299/05<sup>69</sup> established that in a review of an AD measure, the investigative institutions are supposed to use the same method, including the method related to the comparison of EP and NV under Article 2(10) as that used in the original investigation; although, institutions can have recourse to different methodologies for the calculation of NV and EP if circumstances of the case have been significantly changed. However, derogation from general principle and recourse to exception should be interpreted strictly and the institutions must show that a significant shift has been occurred in the circumstances of the case which led to the application of different methodology in review investigation.<sup>70</sup> However, the application of the same or different methodologies for calculations of normal value in two different (but having identical circumstances) original investigations has not been discussed in the EU courts, or may be this issue is not raised in the courts.

It could be concluded, that comparatively, it was more transparent and consistent investigation as done by the EU Commission. This investigation is significantly varied from investigation conducted through Commission Regulation (EC) 306/04. In both investigations (the one conducted in 2004 and latest conducted in 2009) the same product originating from the same exporter (Novatex) was involved, however the outcomes of both were completely different (as in the previous investigation dumping margin 14.8% of the export price was calculated, however in the latest investigation its rate was 0.6% *di minimis* of export price).

The author believes that it is due to the different methodologies applied by the Commission to calculate normal value. Another important difference is that although the product concerned involved was the same in both inquiries, in the previous investigation the Commission divided the product concerned into five

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<sup>68</sup> Case T-423/09, *Dashiqiao Sanqiang Refractory Materials Co. Ltd v Council of the European Union* [2011] ECR II-08369, Para 62

<sup>69</sup> Case T-299/05, *Shanghai Excell M&E Enterprise Co. Ltd and Shanghai Adeptech Precision Co. Ltd v Council of the European Union* [2009] ECR II-00565, Para 187

<sup>70</sup> Case T-221/05, *Huvis Corp v Council of the European Union* [2008] ECR II-00124, Para 41

different types, thus calculating their normal value by applying different methodologies, as sale of some types was not found in the ordinary course of trade. But in the later inquiry held in 2009, unlike the previous investigation, the product concerned was not classified into different types, instead it was placed in the same homogeneous group, and thus only one methodology was used to calculate normal value.

However, it is noted that after termination of proceedings in 2009 due to the calculation of negative dumping margin in respect of a sole Pakistani exporter, an anti-subsidy proceeding was initiated against the same exporter alleging subsidised imports of the same product (polyethylene terephthalate), which resulted in the imposition of anti-subsidy duty through Commission Regulation (EU) 473/10.

## **2.5 INITIATION AND WITHDRAWAL OF COMPLAINT FOR IMPOSITION OF AD DUTY ON ETHYL ALCOHOL BEING EXPORTED FROM PAKISTAN**

### **2.5.1 INITIATION**

On 26 May 2005, the Commission reported (by a notification distributed in the OJ of the EU) the start of an AD investigation concerning imports into the Union of ethyl liquor originating in Guatemala and Pakistan, normally declared under CN codes 2207 10 00 and ex 2207 20 00.<sup>71</sup>

The AD inquiry was opened following a complaint was filed on 11 April 2005 by the Committee of Industrial Ethanol Producers of the European Union. The complaint was filed on behalf of manufacturers constituting a main part, in current investigation above 30%, of the Union manufacture of ethyl alcohol. The complaint enclosed sufficient proof of material injury and the existence of

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<sup>71</sup> Commission Notice of initiation of an anti-dumping proceeding concerning imports of ethyl alcohol originating in Guatemala and Pakistan [2005] OJ C 129/05

dumping of the said product. It was considered enough to validate the initiation of investigation.<sup>72</sup>

### **2.5.2 TERMINATION OF PROCEEDINGS**

The Commission served notice to all concerned parties about the initiation of proceedings; however, later the complaint was withdrawn by the applicant. The applicant asserted that complaint was withdrawn due to the late critical amendment in the GSP<sup>73</sup> status on ethyl liquor being imported from Pakistan. By complainant, however this has not completely disposed of practice of dumping; it has helped significantly to control the huge volume of dumped imports originating from Pakistan. The applicant stated that the withdrawal of the complaint concerning both nations is an adequate course of action at the present time, as the injury information in the complaint depended on the joined impact of imports from Pakistan and Guatemala.<sup>74</sup>

The Commission considered that the present proceeding should be terminated as the investigation had not come across any concern presenting that such termination would not be in the Community interest.<sup>75</sup> The Commission therefore concludes that the AD proceeding relating to imports into the Union of ethyl alcohol being imported from Pakistan and Guatemala should be dismissed without the levying of ADD.

### **2.5.3 ANALYSIS**

It is concluded that, apparently, grant of generalised system of preference cannot be a reason for reduction of dumped imports of ethyl alcohol from Pakistan. Conversely, Generalised System of Preference (GSP+) status (a promise from the EU to liberalise trade from Pakistan and free trade access to EU markets through

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<sup>72</sup> Ibid

<sup>73</sup> Generalised System of Preference

<sup>74</sup> Commission Decision of terminating the anti-dumping proceeding concerning imports of ethyl alcohol originating in Guatemala and Pakistan [2006] OJ L 112/13, Para 5

<sup>75</sup> Ibid, Para 7

grant of generalised preferential tariff arrangements) may have helped to increase the flow of imports from Pakistan.

The same issue was raised in bed linen Case T-199/04 and Case C-638/11 where, due to the sanction of GSP status to Pakistan by the EU, the level of imports of bed linen from Pakistan to EU significantly increased which later resulted in the form of initiation of investigation and imposition of AD duty on alleged dumped imports from Pakistan. In this case, responding to the argument of Gul Ahmed (a manufacturer of bed linen based in Pakistan) argument, the Union's industry has not suffered due to dumped imports from Pakistan; instead it is allegedly injured due to the increased flow of trade bearing grant of GSP status to Pakistan, the Council argued that the impact of GSP status is no dumped imports themselves as legislative amendment of or grant of GSP status cannot be considered an 'other known factor' directly affecting the Union's industry.

Therefore, considering the arguments of the Council in Case T-199/04<sup>76</sup>, and the decision of the WTO Panel in report WT/DS405/R<sup>77</sup>, it could be established that grant of GSP status and removal of quantitative quota, instead of reducing the volume of dumped imports, help to increase the flow of trade. Secondly, legislative amendment and grant of GSP status could not have any bearing upon the conduct of the Union industry instead their impact will be considered on the dumped imports itself thus, it cannot be considered as 'other known factor' within the significance of Article 3(7).

Vermulst noted that Union industry have withdrawn their complaints during the investigation process when they are informed that the Commission is about to terminate the proceedings on account of negative injury margin or Community

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<sup>76</sup> Council's Arguments in Case T-199/04, *Gul Ahmed textiles Ltd v Council of the European Union* [2011] ECR II-00321, Para 47

<sup>77</sup> WT/DS405/R, 'WTO Panel Report, European Union anti-dumping measures on certain footwear from China (adopted on 28<sup>th</sup> October 2011)  
[https://www.wto.org/english/tratop\\_e/dispu\\_e/405r\\_e.pdf](https://www.wto.org/english/tratop_e/dispu_e/405r_e.pdf)

interest requirement. Complaints can also be withdrawn where Union industry stopped production of ‘product concerned’.<sup>78</sup>

The Commission’s argument was that, as combined data of alleged dumping was used to establish injury to the Union’s market, therefore investigation should be terminated in respect of Guatemala as well. In order to protect the Union industry from dumped imports originating from Guatemala, however, a fresh investigation might have been conducted exclusively based upon data of injury caused to the EU due to alleged dumped imports originating from Guatemala. In other words, EU manufacturers and institutions knowing that their market is being injured due to dumped imports from Guatemala just decided to withdraw the complaint and terminate the investigation, though Community interest did not call for termination of the investigation, as apparently this test was not even conducted .

One of the potential reasons for withdrawal of a complaint can be fear on the part of Union industry that negative injury margin calculation in this investigation may set a precedent for other similar investigations already on-going.<sup>79</sup>

## **2.6 EXTENSION OF AD DUTY ON ELECTRONIC COMPACT FLUORESCENT LAMPS ASSEMBLED IN AND/OR ORIGINATING FROM PAKISTAN**

### **2.6.1 INITIATION OF PROCEEDINGS**

The Council levied definitive AD measures going from 0% to 66.1% on imports of integrated electronic compact fluorescent lights (CFL-i) (by regulation (EC) No 1470/2001) exporting from China (the original investigation). On 16 August 2004, as per Article 13(3), the Commission received an application to inquire the assumed circumvention of the protective measures levied on CFL-i China (PRC). The application was put together by the Lighting Industry and Trade in Europe (‘LITE’) in the interest of manufacturers and merchants of CFL-i in the Union.

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<sup>78</sup> Edwin Vermulst, *EU Anti-dumping Law and Practice* (2<sup>nd</sup> edition, Sweet & Maxwell 2010) 43

<sup>79</sup> Ibid

All stakeholders from Pakistan were given opportunity to make them known, and the questionnaires were sent to them.<sup>80</sup>

However, only one Pakistani exporter (Ecopak Lightening Karachi) replied. A verification visit was conducted on its premises. The investigation period enclosed the period from 1 July 2003 to 30 June 2004. It was established that the data provided by the Pakistani collaborating trader was untrustworthy. Given the above, the Commission partially relied upon the facts available, and import data available at Eurostat was also used.<sup>81</sup>

## **2.6.2 CHANGE IN THE TRADE PATTERN**

Imports from Pakistan, the Philippines and Vietnam, nearly non-existent before 2001, enlarged meaningfully following the levying of duty. On the other hand imports from PRC almost halved following the levying of duty in 2001, i.e. it reduced from 85 million units in 2000 to 37 million units in 2002. The Commission, however, determined that after imposition of AD duty on China the Chinese exports to EU clearly reduced, but imports from Pakistan started in 2001 and enlarged during the investigation period (IP) from 0.2 million units in 2001 to 0.9 million units during the investigation period, i.e. 490%.<sup>82</sup>

## **2.6.3 NATURE OF THE CIRCUMVENTION PRACTICE**

After the levying of temporary measures by the first inquiry about China, Ecopak Lighting was enrolled toward the start of 2001 (amid the first investigation) and began actual business in May 2001. Apparatus and machinery were bought from a trader situated the China.

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<sup>80</sup> Council Regulation (EC) No 866/2005 of 6 June 2005 extending the definitive anti-dumping measures imposed by Regulation (EC) No 1470/2001 on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines [2005] OJ L 145/1, Para 6

<sup>81</sup> Ibid, Para 7-10

<sup>82</sup> Ibid, Para 30



It ought to be noticed that during the verification visit it was observed that no staff were available, no stocks existed and no movement (neither manufacture nor assembling) was occurring at the premises of the trader. The manufacturer clarified that they had halted the operations immediately before the start of the current examination, and had not yet chosen if they would resume the operation, in spite of the fact that they had assembling procedures during the investigation period, as appeared specifically by the machinery. The Commission established that on this premise, the presence of a manufacturing capability could not be perceived.<sup>83</sup>

The accounting records, comprising the reports of the auditors, were found to be untrustworthy, as they were not in accordance with global bookkeeping principles; as result the value added to the parts or exact estimation of the foreign-made parts could not be ascertained. It was reasoned that the operations occurring in Pakistan amid the examination period ought to be considered as assembly operations, dodging the definitive dumping measures in force. The Commission based its conclusion on available facts and evidence. It includes the information submitted by the exporter and the fact that all kits and part were being imported from same company based in China which was already subject to EU's AD measures.<sup>84</sup>

The Commission claimed that the examination revealed further facts which established that except for the imposition of AD duty, assembly operations in Pakistan had no other due reason or financial reason. The establishment of assembly operations of CFL-i in Pakistan coincided with the change depicted above in the design of trade. The exporter asserted that the purpose behind beginning the operation in Pakistan was specifically enhanced infrastructure, low work costs in Pakistan and the empowering environment for foreign investment.

On the other hand, the Commission established that the trader could not demonstrate that these components were thought about seriously when the

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<sup>83</sup> Ibid, Para 49-50

<sup>84</sup> Ibid, Para 52

decision to begin the operation in Pakistan, and none of these arguments could be maintained by adequate evidence; rather the results of the on-the-spot verification intensely challenged the trader's claim. Thus, it was established that other than the levying of the AD measures, there was inadequate due premise and no monetary explanation for the modification in the design of trade.<sup>85</sup>

In this way, an examination of the weighted average of export prices amid this current investigation's IP and the weighted average NV as calculated in the original inquiry, indicated dumping for the imports of CFL-i originating from Pakistan.<sup>86</sup> Consequently, the definitive AD duty with the rate of 66.1% of export price was extended to electronic compact fluorescent discharge lamps dispatched from Pakistan, the Philippines and Vietnam. After the expiry review of the existing measures, it was further extended for a period of five years through Council Regulation (EC) 1205/2007, as the previous measures completed their five years' tenure in 2007.<sup>87</sup>

#### **2.6.4 ANALYSIS**

Article 13 only requires evidence of dumping, it does not require calculation of a separate dumping margin; instead the dumping margin calculated in the original investigation will retrospectively apply on circumvented imports. A circumvention investigation is different from an ordinary AD investigation, e.g. no formal complaint supported by a majority of Union industry is required. Similarly, the AD investigation should be concluded within nine months as opposed to 15 months in a normal AD investigation.<sup>88</sup>

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<sup>85</sup> Ibid, Para 51

<sup>86</sup> Ibid, Para 62

<sup>87</sup> Council Regulation (EC) No 1205/2007 of 15 October 2007 imposing anti-dumping duties on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 and extending to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines [2007] OJ L 272/1

<sup>88</sup> Van Bael and Ballis, *EU Anti-Dumping and other Trade Defence Instruments* (5th Edition, Kluwer Law International 2011) 645

It is established that the original investigation was defective, as, according to Article 5(4) of the basic regulation, the majority of Union producers threshold (representing minimum 50% of total manufacture of product concerned in Union) threshold was not met; thus Union producers representing 48% of the total production of the Union were supporting the initiation of investigation.

In this case, Philips (Pvt) Ltd. opposed the initiation of complaint; however the Commission excluded it from the definition of Community industry on the ground that it was the largest importer of dumped Chinese imports. In *Electrolytic Aluminium Capacitors Originating in Japan*, the main complainants and importer were sister companies. Therefore the Commission considered that import legitimate on the ground that these imported parts were being used to manufacture the principal product.<sup>89</sup> In order to assess the possible inclusion or exclusion of a particular company within the ambit of Community industry, its balance of imports and manufacture should be assessed.<sup>90</sup>

Further, it is determined that the EU Commission has not precisely stated the representative threshold of Union producers supporting the extension of measures; it however only states that the majority of Union producers were supporting the complaint. However, within the meaning of judgements in Case T-310/12<sup>91</sup> and Case T-192/08<sup>92</sup>, the institutions are under obligation to reveal their findings completely and give appropriate statement of reasons for their actions, so that the interested parties can make use of these statements to challenge the institution's findings in the EU Courts. In cases T-195/95<sup>93</sup> and T-19/01<sup>94</sup>, it was concluded that the certainty and sound administration of justice demands that if the statement

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<sup>89</sup> Themistoklis Giannakopoulos, *A Concise Guide to the EU Anti-dumping/anti-subsidies Procedures* (Kluwer Law International 2006) 66

<sup>90</sup> Clive Stanbrook and Philip Bentley, *Dumping and Subsidies: Law and Procedures Governing the Imposition of Anti-Dumping and Countervailing Duties in the European Community* (3<sup>rd</sup> edn, Kluwer Law International 1996) 109

<sup>91</sup> Case T 310/12, *Yuanping Changyuan Chemicals Co. Ltd. v Council of the European Union* [2015] OJ C 273

<sup>92</sup> Case T-192/08, *Transnational Company 'Kazchrome' AO and ENRC Marketing AG v Council of the European Union* [2011] ECR II-07449, Para 256-257

<sup>93</sup> Case T-195/95, *Guérin automobiles v Commission of the European Union* [1997] ECR II-679, Para 20

<sup>94</sup> Case T-19/01, *Chiquita Brands and Others v Commission of the European Union* [2005] ECR II-315, Para 64

of reasons are brief, it must be coherent and comprehensible with the relevant facts of the case and applicable law relied upon.

Van Bael and Bellis did not find any definition of circumvention in the basic regulation; however decision in this regard is left on the wide discretion of the Commission. Normally, change of pattern means significant increase of imports from a third country not subject to anti-dumping duty.<sup>95</sup>

As under Article 13(2) of the Council regulation (EC) 384/96, an assembly process in a third state may be measured as circumvention if it meets with the following three conditions:

- (a) the operation started or considerably enlarged just preceding the start of the AD inquiry and the parts concerned are from the republic subject to duty;
- (b) in no case should circumvention be thought to be occurring where the value added to the parts got, amid the assembling process, is above 25% of the manufacturing cost, and the parts must constitute 60 % or a greater amount of the collective estimation of the parts of the assembled item;
- (c) there is proof of dumping in connection to the NV already settled for the like or comparable products and the remedial impacts of the measures are being undermined as far as the costs and/or quantities of the assembled like product.

Therefore, it could be established that the first and last condition as specified by Article 13(2) of the basic regulation were accurately met. The Commission's claim that Ecopak registered and started business just before the imposition of AD duty on PRC is evident from the import data (of product concerned) exported from Pakistan as described below in figure 4.3. It is evident that Ecopak had no export of CFL to the EU before 2001. Similarly, it is also apparent that the remedial effect of duty imposed on PRC was undermined, as exports from

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<sup>95</sup> Above (n 88), 633

Pakistan in terms of quantity significantly increased after the imposition of duty on China.

However, as far as the second condition as provided by Article 13(2) is concerned, it could be asked that on what basis (information or data) the Commission concluded that the value of assembled parts in Pakistan represents more than 60% of the overall value of the product concerned, or that the value added to the parts brought in represented less than 25% of the production cost. However, as adjudicated by the EU Courts in cases referred above, there is a lack of statement of reasons (by the Commission) about the nature and authenticity of data used to establish the second prerequisite of Article 13(4).

It was established in Case T-633/11<sup>96</sup> and Case T-192/08<sup>97</sup> that, Article 18(1) of the basic regulation allows the institutions to use the facts available where an interested party has impeded the verification visit, refuses to provide relevant information or otherwise does not provide necessary information within prescribed time limit or provided misleading information. However, facts available should not necessarily be used if, information provided by the trader is not misleading but it is not ideal in all respects.

It is also apparent from the judgement in *Transnational Company 'Kazchrome' and ENRC Marketing v Council*<sup>98</sup>, that if any of the above mentioned four conditions is met, Commission can use facts available for the purpose of its investigation. However, in this case although, non-availability of accurate accounts (in accordance with international standards) is a logical reason for the Commission to have recourse to the facts available; yet the general court in case T-633/11 did not consider it an ideal and preferable method. Recourse to facts available is authorised where no other way left to collect required information.

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<sup>96</sup> Case T- 633/11, *Guangdong Kito Ceramics Co. Ltd v Council of the European Union* [2014] OJ C 32, Para 39

<sup>97</sup> Case T-192/08, *Transnational Company 'Kazchrome' AO and ENRC Marketing AG v Council of the European Union* [2011] ECR II-07449, Para 276

<sup>98</sup> Case C-10/12 *Transnational Company 'Kazchrome' and ENRC Marketing v Council of the European Union* [2013] OJ C 65, Para 268-269

## 2.7 CASE ANALYSIS OF CASE T-469/07

### 2.7.1 BRIEF FACTS OF THE CASE

On 16 July 2001, the Council through its Regulation (EC) No 1470/2001<sup>99</sup> levied a definitive ADD on imports of CFL imported from China. On 6 June 2005, the Council adopted Regulation (EC) No 866/2005<sup>100</sup> extending the definitive AD duty on imports of same product from Pakistan, Vietnam and the Philippines (discussed above in detail).

On 14 October the definitive duty expired, as it completed its five-year-term, and an expiry review was launched by the Commission on the request of the Community federation of lighting industry. In response to the questionnaires sent by the EU Commission to establish the Community industry threshold of 50% supporting the initiation of review, GE Hungary and Osram stated that they were in favour of such a procedure being initiated. Sylvania did not reply to the questionnaire, while Philips opposed the initiation of expiry review.<sup>101</sup>

The 25% threshold was achieved as two big local manufacturers supported the initiation; therefore, the EU Commission initiated the investigation and sent questionnaires to all concerned parties. By letter of 26 November 2006, GE Hungary informed the Commission that it was no longer in favour of AD measures being continued. It is to be noted that now Osram was the only Community producer of CFL-i supporting continuation of the anti-dumping measures at issue, as subsequently Sylvania also informed the Commission that it was not in favour on the initiation of expiry review. Hence, the collective output

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<sup>99</sup> Council Regulation (EC) No 1470/2001 of 16 July 2001 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China [2001] OJ L 195/8

<sup>100</sup> Council Regulation (EC) No 866/2005 of 6 June 2005 extending the definitive anti-dumping measures imposed by Regulation (EC) No 1470/2001 on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines [2005] OJ L 145/1

<sup>101</sup> Case T 469/07, *Philips Lighting Poland S.A. and Philips Lighting BV v Council of the European Union* [2013] OJ C51, Para 15-17

of CFL-i of Philips Poland and GE Hungary accounted for over 50% of the total Union production of CFL-i.<sup>102</sup>

However, the Commission stated that in this case, at the time when the review was opened, the request was supported by a majority of the union manufacture, but that the position had altered during the inquiry. It noted that the collective output of the producers opposing the request now represented slightly above than 50% of the total Community manufacture, and it concluded that the anti-dumping measures at issue ought to be repealed and the review procedure terminated.<sup>103</sup>

On 31 August 2007, the Commission issued a general disclosure document, in which it stated that the period of application of the AD measures at issue should be extended by one year. It is stated in particular that by analogy to Art. 9(1) of the basic regulation<sup>104</sup> if the Community interest test demands so, the EU institutions can continue the investigation regardless of the withdrawal of the complaint by the interested parties. However, in this case the Community institutions consider that it is not necessary to take a decision regarding Articles 4(1)<sup>105</sup> and 5(4) of the basic regulation, since it is in the Union interest to prolong measures for a period of one year. On 15 October 2007, the Council implemented Regulation 1205/2007<sup>106</sup> levying AD duties on imports of [CFL-i] originating from China, Pakistan and Vietnam. Therefore, the applicants pleaded to annul the Council Regulation, while, the Council of the EU and the Commission pleaded to dismiss the action.<sup>107</sup>

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<sup>102</sup> Ibid, Para 22-25

<sup>103</sup> Ibid, Para 31

<sup>104</sup> Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1996]OJ L 056, art 9(1) now Article 9(1) of Council regulation (EC) 1225/2009

<sup>105</sup> Council Regulation 1225/2009, art 4(1)

<sup>106</sup> Council Regulation (EC) No 1205/2007 of 15 October 2007 imposing anti-dumping duties on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 and extending to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines [2007] OJ L 272/1

<sup>107</sup> Above (n 101) Para 33-36

## 2.7.2 JUDGEMENT

The General court held that Article 5(4) of the basic AD regulation No 384/96 does not place any obligation on the Commission to terminate an AD investigation where the degree of support from the Union industry drops below a minimum requirement of 25% of Community production supporting the complaint. That article concerns only the level of support of the Union industry necessary for the Commission to be able to initiate a proceeding. Under Article 9(1) of the said regulation, the Commission is not under an obligation to terminate a procedure when a complaint is withdrawn. That must apply *a fortiori* when the degree of support for a complaint merely falls.<sup>108</sup>

Since Articles 5(4) and 9(1) of the basic regulation are applicable to review procedures, pursuant to Article 11(5) of that regulation, the above principles also apply where the level of support for the request for a review falls below the threshold of 50% of the Union production in the course of the review investigation. The institutions are thus perfectly entitled to continue the review procedure, notwithstanding the fact that it was possible that the 50% threshold referred to in Article 5(4) of the basic regulation was no longer met.<sup>109</sup>

Furthermore, Article 9(1) of the basic regulation expressly obliges the institutions to take account of Community interest only if they envisage terminating the procedure further to the withdrawal of the complaint. Article 4(1)<sup>110</sup> of the basic AD Regulation defines the term ‘Community industry’ as either manufacturers whose combined production of the products accounts a major share or the Union producers as a whole of the like products. It being understood that in both cases, producers coming within the situations provided for in Article 4(1) (a) may be

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<sup>108</sup> Case T-469/07 Philips Lighting Poland S.A. and Philips Lighting BV v Council of the European Union [2013] OJ C 51, Para 85

<sup>109</sup> Ibid, Para 86

<sup>110</sup> Council Regulation (EC) 1225/2009, art 4(1)



excepted from the Union production. The institutions have a broad discretion when choosing between the two options.<sup>111</sup>

Furthermore, the Union industry used for the purpose of calculation of injury does not necessarily have to comprise the same Community producers as those making up the Community industry taken into account in order to ascertain whether the original complaint or the request for a review enjoyed sufficient support as provided by Article 5(4)<sup>112</sup>. Firstly, in the latter case, the Community industry may, in light of the wording of Article 5(4), comprise only the Union manufacturers backing the complaint or request for a review, whereas, in the former case, the definition may include all Community producers, regardless of whether they have expressed such support.<sup>113</sup>

### 2.7.3 COMMENT

It could be argued that the Council committed a manifest error of assessment by concluding that the majority of the Community industry supported the initiation expiry review, however factually only a single company, Orsam representing 48% of the EU's CFL production supported such initiation, while the remaining three companies representing 52% of the EU's industry, opposed the action. Therefore, it is established that the Commission and the Council infringed Article 5(4)<sup>114</sup> of the basic regulation, as it states that a complaint should be considered made by the union industry if it is supported by manufacturers collectively producing at least 50% of the like product in the Union.<sup>115</sup>

It is noted that when producers are related to the importers or exporters, or they are importers themselves, they will not wish to support the complaint. In this case, the right (of other manufacturers) to file a complaint cannot be abrogated. Thus a complaint can be initiated by them if, after the exclusion of the related importer,

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<sup>111</sup> Above (n 108) Para 92

<sup>112</sup> Council Regulation (EC) 1225/2009, art 5(4)

<sup>113</sup> Above (n 108) Para 93

<sup>114</sup> Above (n 112)

<sup>115</sup> Case T 469/07, *Philips Lighting Poland S.A. and Philips Lighting BV v Council of the European Union* [2013] OJ C51

they fulfil the required representative threshold.<sup>116</sup> The text of Article 4(1) (a) is not clear, but it seems that the 25% and 50% threshold for initiation and continuance of complaint will still be required.<sup>117</sup> However, the link between these two thresholds is ambiguous, and it should be made more clear and transparent by amending article 4(1).

The 25% threshold is too low, as it encourages non-competitive producers to join forces to file a complaint, instead of modernising their production plants etc.<sup>118</sup> Union industry means total Union industry or a majority of it; however a majority of Union industry cannot be represented by manufacturers accounting for 25% of total Union production.

Secondly, it could be concluded that the Council has wrongly used Article 9(1) of the basic regulation as analogue applicable provision in the current case. Article 9(1) of the basic regulation grants authority to the Commission that if community interest requires, so it may not terminate the investigation, regardless of the fact that the complaint is withdrawn by the complainants. Firstly, Article 9(1) relates with the withdrawal of fresh complaint instead of the withdrawal of request for expiry review. The basic regulation however lacks provision dealing with the withdrawal of complaint in the expiry review. Secondly, in this case the plea for review is not completely withdrawn however; Article 9(1) deals with the situation where complaint is completely withdrawn.

If the Council's interpretation of Article 9(1) of the basic regulation to be accepted, a new and potentially far-reaching power would be conferred upon it. In addition, this would completely emasculate the requirement set out in Articles 3(1), 9(4) and 11(2)<sup>119</sup> of the basic regulation that injury to the

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<sup>116</sup> Clive Stanbrook and Philip Bentley, *Dumping and Subsidies: Law and Procedures Governing the Imposition of Anti-Dumping and Countervailing Duties in the European Community* (3<sup>rd</sup> edn, Kluwer Law International 1996) 107

<sup>117</sup> Themistoklis Giannakopoulos, *A Concise Guide to the EU Anti-dumping/anti-subsidies Procedures* (Kluwer Law International 2006) 64

<sup>118</sup> Edwin Vermulst, *EU Anti-dumping Law and Practice* (Sweet & Maxwell 1996) 291

<sup>119</sup> Council Regulation 1225/2009, art 3(1), 9(4) and 11(2)

‘Community industry’ as defined in Article 4(1) of that regulation must be proven in order to impose AD duties.

The Council contends that if a provision allows the institutions to continue a procedure where the complaint is withdrawn in its entirety, it necessarily allows them to do so where only part of the support is withdrawn. The Council’s argument is strong and logical, but as a matter of fact the Council does not have jurisdiction to interpret the law and apply it by analogue. Instead, the institutions should base their findings on straightforward and directly related provisions.

This thesis also objects to Article 9(1) of the basic regulation because of the inconsistency of Article 9(1) and Article 5(4)<sup>120</sup> with each other. The former requires representation of at least of 50% of the Community industry to continue the investigation; however, the latter provides that if the representative threshold of 50% is not met, the Commission can continue the investigation on its own, bearing the Community interest involved. But the question may arise that where local manufacturers, exporters, importers or consumers do not have any concern or complain, there is no point to continue the proceedings on its own by the institution.

In Case T-249/06<sup>121</sup> it was established that Article 5(4) of the basic regulation does not place any obligation on the institutions to terminate the investigation if it lose the prescribed threshold of support of 25% from the Community industry, instead it is only related to the initiation of the investigation. The Court further referred to Article 9(1) of the basic regulation, where in case of withdrawal of the complaint by the complainants, the Commission is under no obligation to terminate the proceedings, if the Community interest demands so. But it should be noted that the same Article requires local manufacturers representing 50% of the overall production in the Community of the concerned product, in order to

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<sup>120</sup> Council Regulation (EC) 1225/2009, art 5(4)

<sup>121</sup> Case T-249/06, *Interpipe Nikopolsky Seamless Tubes Plant Niko Tube ZAT (Interpipe Niko Tube ZAT) and Interpipe Nizhnedneprovsky Tube Rolling Plant VAT (Interpipe NTRP VAT) v Council of the European Union* [2009] ECR I-01335, Para 139

consider that the particular investigation is carried out on behalf of the Union industry.

While defining the notion of Union industry, Article 4(1)<sup>122</sup> of the basic regulation provides that either it could be the whole industry of the Union or it may be the major proportion of the industry representing at least 50% of them. Therefore, according to the Court, institutions enjoy wide discretion to exclude particular local manufacturers from the ambit of the Community industry, based on particular grounds. It is to be noted that in the original investigation, while defining the Community industry, the Commission included the whole local industry for the purpose of determination of injury.

However, in the current investigation of review, the Commission opted to stick to the second option, i.e. local industry representing 50% of total produce of the product concerned. Therefore, in their current definition of the Community industry, they opted to confine it to two manufacturers namely Osram and GE Hungary, while excluding Philips and Sylvania from its definition of the Community industry. It is noted that the Commission has wide discretion in terms of defining Union industry, and in many cases it is unclear why it has included one manufacturer and excluded another. The EU Court of Justice has reaffirmed the Commission's discretion in this regard. However, the Commission's definition of Union industry varies from case to case.<sup>123</sup>

It is further argued that the Commission must define the Community industry in the same way both in the original investigation and in the review procedure, as, it will bring more consistency and efficacy to the procedures. Otherwise, a flexible manoeuvring of procedures by the Commission may tend to unduly prejudice either of the parties. The Commission has profoundly excluded those Community producers which were against the initiation of expiry review, and it does not seem to be just.

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<sup>122</sup> Council Regulation (EC) 1225/2009, art 4(1)

<sup>123</sup> Arturas Mickus, 'Shortcomings of EU Anti-Dumping Law and Policy' (2002) 4(4) European Journal of Law Reform 525, 561

Mickus argues that the basic regulations do not provide any criteria about minimum added value that can form the basis for a decision whether or not a related producer should be included within the definition of Union industry. However, the Commission has adopted certain arbitrary criteria in this regard. The institutions consider them within the ambit of Union industry, if they act to a large extent as an autonomous economic entity.<sup>124</sup>

Secondly, if the institution's and court's verdict is accepted that the inclusion of the said Community manufacturers was inappropriate, considering the fact that they were overwhelmingly involved in imports from China, then also they must not be part of the original investigation, although it is not an consistent ground to exclude a local manufacturer from the ambit of Community industry. Within the meaning of judgements in Case T-423/09<sup>125</sup> and Case T-299/05<sup>126</sup>, institutions can only use a different methodology in review and in the original investigation if circumstances in both cases have significantly changed. However in the current case neither change of circumstances occurred and nor did the Council and Commission use it as ground of their decision.

It is ruled in Cases T-558/12<sup>127</sup> and T-310/12<sup>128</sup> that statement of reasons must be detailed and clear and unambiguous providing an opportunity to all interested parties to understand the rationale of the adopted measures by the authorities and thus to facilitate them to defend their rights, and the Courts of the European Union to exercise their powers of review. The question whether statement of reasons provided by the Commission meet the requirements of Article 296 TFEU must be assessed not only within the light of wording but also the meaning and context of the said Article. The circumstances of each case and the legal rules governing the

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<sup>124</sup> Ibid, Van Bael and Ballis, *EU Anti-Dumping and other Trade Defence Instruments* (5th Edition, Kluwer Law International 2011) 268

<sup>125</sup> Case T-423/09, *Dashiqiao Sanqiang Refractory Materials Co. Ltd v Council of the European Union* [2011] ECR II-08369, Para 62

<sup>126</sup> Case T-299/05, *Shanghai Excell M&E Enterprise Co. Ltd and Shanghai Adepteck Precision Co. Ltd v Council of the European Union* [2009] ECR II-00565, Para 187

<sup>127</sup> Joined Cases T 558/12 and T 559/12, *Changshu City Standard Parts Factory v Council of the European Union* [2015] OJ C 46, Para 121

<sup>128</sup> Case T 310/12, *Yuanping Changyuan Chemicals Co. Ltd, v Council of the European Union* [2015] OJ C 273, Para 204

issue should also be considered.<sup>129</sup> However, the General court held in cases T-387/94 and T-164/94 that it is not necessary for institutions to state the reason for every factual and legal consideration involved.

However, it is also found that the Council has failed to state adequate reasons for its conclusion under Article 296 TFEU. The Council and Commission could not reasonably establish whether Community industry representing 48% production of the Community could be considered as major industry of the Community. The institutions also could not logically establish the proper reasons for the elimination of Philips and Sylvania from the ambit of the Union industry. Similarly, the institutions' reasoning regarding application of different methodology in the original and review investigation is weak.

In Case T-385/11<sup>130</sup> and Case T-35/01<sup>131</sup> the General Court held that EU Commission have wide discretionary powers due to the complex economic factors involved, therefore judicial review is restricted to observing whether procedures have been followed properly, if the fact relied upon by the investigative bodies have been accurately stated or whether there is any manifest error of assessment or misuse of powers. It is however contended that although Article 4(1) of the basic regulation renders discretion to the Commission to define the Union industry itself, either in the form of the whole industry or a major portion of the Community industry, the Commission must use its discretion diligently, based on strong grounds.

Fritzsche defined discretion as the power of decision-makers to decide on the application of the relevant law to a particular set of facts or situation. The discretionary powers are invoked when statutory laws do not provide express guidance for a specific situation. The judicial review is, however, the revision of the administrative actions of decision-makers (in this case the Commission and

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<sup>129</sup> Case T-432/12, *VTZ and Others v Council of the European Union* [2015] OJ C 198, Para 201

<sup>130</sup> Case T 385/11, *BP Products North America Inc v Council of the European Union* [2014] OJ C 282, Para 92

<sup>131</sup> Case T-35/01, *Shanghai Teraoka Electronic v Council of the European Union* [2004] ECR II-3663, Para 34

the Council), to assess whether relevant bodies have acted upon the express and implied will of the applicable law.<sup>132</sup>

According to Galligan, two variables are essential for the central sense of discretion: the opportunity for calculation and judgement available to the decision-makers; and the surrounding approach of the officials to how the issue should be resolved.<sup>133</sup> However, it is argued that there is no standard regarding the clarity of statutory provisions, as the express provisions may also offer multiple interpretations.

According to Advocate General Lèger, technical discretion is granted to the administrative bodies, and it is justified by the complexity of economic calculations.<sup>134</sup> Further, he noted that, in the case of technical discretion, EU courts exercised judicial review very strictly. However, in the presence of consensus of the legal literature about the politicised use of AD measures worldwide, it is suggested that courts should actively review the exercise of discretionary powers by investigative authorities. Koutrakos noted that where the EU Courts have refrained to review the substantive issues in AD proceedings, they have however adopted a more liberal approach in procedural issues involved in AD investigations.<sup>135</sup>

Vermulst established that the EU Courts (the General Court and ECJ) used to take almost five years to review the findings of the administrative bodies. The judicial review process is, however, quite slow although it should be a 'prompt review' according to Article 13 ADA. The EU courts have been found to be reluctant to review the substantive issues (as opposed to the procedural issues). Mostly, their decisions about limited judicial review or comprehensive judicial review were

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<sup>132</sup> Alexander Fritzsche, 'Discretion, Scope of Judicial Review and Institutional Balance in European Law' (2010) 47 (2) Common Market Law Review 361, 364; Van Woude, 'The Court of First Instance: The First Three Years' (1993) 16 (2) Fordham Intl. L.J. 412, 459

<sup>133</sup> Galligan, *Discretionary Powers: A legal Study of Official Discretion* (Clarendon Press Oxford 1986) 3

<sup>134</sup> Case C-40/03 P, *Rica Foods (Free zone) NV v. Commission* [2005] ECR I-6811, Opinion of Advocate General, Lèger Para 45

<sup>135</sup> Panos Koutrakos, *Modern Studies in European Law: EU International Relations Law* (2<sup>nd</sup> Edition, Hart publishing 2015) 369

based on their usual practice instead of law. He opined that this problem can be solved only by the amendment of ADA, providing for the constitution of specialised courts.<sup>136</sup> The issue of discretion and its judicial review has been further explored in sections 3.5.3, 4.5.4 and 5.6.

## **2.8 CONCLUSION**

The current chapter has attempted to answer the first research question of this study. It has examined the provisional and definitive ADDs respectively, imposed by the Commission and the Council, on imports of PET, originating from Pakistan. The complaint for imposition of ADD on ethyl alcohol, originating from Pakistan; and later withdrawal of that complaint, has also been discussed in detail. Similarly, the application of ADD on imports of CFL, originating from China, and its extension to import of CFL, assembled in Pakistan; due to alleged circumvention of AD measures has been investigated.

However, in the last section, the judgment of the General Court is analysed pertaining to the requirement that, Union industry having at least 50% share in the Union production must support the imposition of ADD on foreign exports. Through, such examination, this chapter pin-point the occasions, where the institutions deviated from the express provisions of the basic regulation, and recommended some changes to the broad provisions of the basic regulation, which tend to offer multiple interpretation. The next chapter is examining the consistency of EU institutions in their application of ADD on cotton-type bed linen originating from Pakistan.

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<sup>136</sup> Edwin Vermulst, 'The 10 Major Problems with the Anti-Dumping Instrument in the European Community' (2005) 39(1) *Journal of World Trade* 105, 107



**Table 2.1: Anti-dumping duties imposed on all other Pakistani exports except textile products**

**Source: Developed by researcher**

Product	Internal Case Number	Country	Status	Normal Expiry	Original Investigation				Measures in force		Interim & Sunset Review			Corrigenda, Other types of reviews	Observations
					Initiation	Prov. Measures	Def. Measures	Termination	Type of Measures	Level (Min-Max)	Initiation	Outcome	OJ Reference		
Bicycles	R608	Pakistan	Investigation continues		L 265, 03.09.2014, p. 5										
Ethyl Alcohol	AD 492	Pakistan	Terminated		C129, 26.05.2005, p. 22			L112, 26.04.2006, p. 13							
Lamps (integrated electronic compact fluorescent)		Pakistan	Expired		L289, 10.9.2004, p. 54		L145, 09.06.2005, p. 1		Ad-valorem	66.10 %	C167, 19.07.2006, p. 13	Continuation of measures	L272, 17.10.2007, p. 1	Expiry C258, 10-10-2008 p.8	Extension of Chinese measures to Vietnam, Pakistan, Philippines
Polyethylene terephthalate (PET)	AD 545	Pakistan	Terminated		C208, 03.09.2009, p. 12			L254, 29-09-10, p.40 Corrected in SL by L281, 27-10-10							

Polyethylene terephthalate (PET)	AS546, AS 546a	Pakistan	Definitive	30-09-2015	C208, 03.09.2009, p. 7	L134, 01.06.2010, p. 25	L254, 29.09.2010, p. 10		Specific	44,02 EUR/tonne				C 138, 17.05.2013, p. 32 L253, 25-09-2	Reopening following judgement (T-556/12) leading to amendment of measures NiE C10, 15-1-13
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## **CHAPTER THREE: IMPOSITION OF ANTI-DUMPING DUTIES ON BED LINEN ORIGINATING FROM PAKISTAN: ANALYSIS OF EU COMMISSION’S INVESTIGATIONS AND THE JUDGEMENTS OF THE EU COURTS**

### **3.1 INTRODUCTION**

Continuing the discussion (as done in the previous chapter) about the of EU institutions in their application of EU anti-dumping (AD) law relating to Pakistan (the first research question), this chapter attempts to examine the Commission’s investigations which led to the application of provisional or definitive AD duty on bed linen originating from Pakistan. The consistency and/or inconsistency of the EU is established on the basis of dissimilar or similar calculations drawn by the Commission (about comparison, normal value and dumping margin etc.) in two different cases but having similar circumstances. Similarly, the interpretation of provisions of basic regulation as drawn by the Commission and EU Courts are cross-checked against each other, thus their corroboration or contradiction is figured out.

### **3.2 PROVISIONAL ANTI-DUMPING DUTY IMPOSED ON COTTON-TYPE BED LINEN THROUGH REGULATION (EC) NO 1069/97**

On behalf of Union manufacturers constituting a significant extent of Union generation of cotton-type bed linen, on 30 July 1996 an application was filed by the Committee of the Cotton and Allied Textile Industries of the European Communities (Eurocoton). The application contained proof of material injury and dumping of the said item traded from Pakistan, India and Egypt. The proof was

viewed as adequate to legitimise the start of an inquiry.<sup>1</sup> Notices were issued to all the concerned parties to give an opportunity of hearing before the Commission and to make known themselves.<sup>2</sup>

According to the majority of Union manufacturers clearly supporting the complaint, the importers and the foreign exporters from India, Pakistan and Egypt, the Commission decided to make use of sampling techniques, and sent questionnaires to and received detailed information from a representative sample of Community producers, exporters and importers.<sup>3</sup>

The Commission conducted verification visits at the sites of sampled Union manufacturers, importers and foreign exporters. In terms of Pakistan they conducted verification visits at the premises of the following Pakistani exporter:- Al-Abid Silk Mills Ltd, Karachi; Al-Abid Export (Pvt) Ltd, Karachi; Fateh Textile Mills, Hyderabad; Gul Ahmed Textiles Mills Ltd, Karachi; Excel Textile Mills Ltd, Karachi; and Mohammad Farooq Textile Mills Ltd, Karachi. These traders constituted approximately 77% of the entire exports into the Union from Pakistan.<sup>4</sup>

### **3.2.1 PRODUCT CONCERNED AND LIKE PRODUCT**

The procedure includes bed linen of cotton-type fibres, bleached, coloured or printed, unadulterated or blended with man-made fibres or flax. Bed linen incorporates bed sheets, pillow cases and duvet spreads, bundled available to be purchased either in sets or independently. The Commission inspected whether the cotton-type bed cloth created in Egypt, India and Pakistan and sold on the Union business sector and on their local markets is similar to cotton-type bed linen manufactured by Union producers and sold on the Union market.<sup>5</sup>

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<sup>1</sup>Commission Regulation (EC) No 1069/97 imposing a provisional anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan [1997] OJ L 156/11

<sup>2</sup> Commission Notice of initiation of anti-dumping proceedings concerning imports of cotton-type bed linen originating in Egypt, India and Pakistan [1996] C 266/02

<sup>3</sup> Commission Regulation (EC) No 1069/97, Para 15-18

<sup>4</sup> Ibid, Para 8

<sup>5</sup> Ibid, Para 10-12

The Commission concluded that although, there were differences in making and bled of the cotton-type bed linen manufactured in Pakistan and the bed linen manufactured in the Union market but they share common usage and common basic characteristics. Therefore, within the ambit of Article 1(4) cotton-type bed linen sold in the Union market and the bed linen manufactured in Pakistan were considered like products.<sup>6</sup>

### **3.2.2 NORMAL VALUE**

It was found that only one trader in the sample was having representative trades of product concerned on the local market throughout the investigation period (IP). Based on the comparability criteria, the Commission found that domestic and export types of the company with representative domestic sales did not permit a proper comparison. Therefore, according to Article 2 (3) of the basic regulation, for all types sold for export to the Union by all Pakistani traders in the sample, the normal value has to be computed based on the constructed price for the products exported to the Union.<sup>7</sup>

For the company with representative local sales it was found that less than 80% but more than 10% of the locally sold types were profitable (i.e. sold at prices above cost of manufacture plus selling, general and administrative (SG&A)). Thus, such trades were considered as made in the ordinary course of trade. Consequently, the SG&A incurred and the profit margin earned in these profitable sales was used in constructing normal value for all Pakistani companies in the sample.<sup>8</sup>

On this basis, the Commission determined the constructed value by accumulating to the budget of manufacture of the exported types of all exporters the expense of SG&A and profit acquired individually by the exporter with representative profitable national sales. Two companies claimed that costs corresponding to idle capacity should not be taken into account in calculating constructed normal value

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<sup>6</sup> Ibid, Para 12-14

<sup>7</sup> Ibid, Para 35

<sup>8</sup> Ibid, Para 35

(NV) bearing the exceptional circumstances resulting from civil disorder on a major scale in Karachi during the investigation period. Given that these companies did not submit sufficient accounting evidence from their records which would justify a deviation from the cost allocations historically utilised, the Commission provisionally did not accept these claims when calculating dumping margins.<sup>9</sup>

### **3.2.3 EXPORT PRICE**

For the most part, sales of bed linen made by the manufacturers on the Union were made to autonomous consumers. Hence according to the Article 2 (8) of the basic regulation, the export price was established by reference to the costs really paid. One Pakistani trader nonetheless, sold some portion of its exports to a related importer situated in the Union. For the transactions made through the related importer, the export prices were adjusted pursuant to Article 2 (9) of Council regulation (EC) 384/96. In this regard, account was made of profits normally accruing and all charges, including taxes and duties, sustained during resale and importation, so that a reliable export price could be established.<sup>10</sup>

### **3.2.4 COMPARISON**

With the end goal of guaranteeing a reasonable comparison between export price and NV, and to review the differences influencing price comparability, due remittances as adjustments were made where material and applicable. An adjustment to normal value was claimed by all Pakistani exporters/producers in respect of import charges by the materials physically incorporated in the like product, while envisioned for consumption in Pakistan and reimbursed on export of the product concerned in accordance with relevant Pakistani legislation. However, the investigation revealed that the amounts of import charges and duties refunded exceeded the verifiable amounts actually included in the cost of the raw

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<sup>9</sup> Ibid, Para 36

<sup>10</sup> Ibid, Para 37-38

materials utilised. Therefore, as per Article 2 (10) (b),<sup>11</sup> the adjustment was restricted to the amounts actually included in the cost of the raw materials.<sup>12</sup>

### 3.2.5 DUMPING MARGIN

In general, weighted average export price and weighted average constructed NV was compared by type-to-type. However, with regard to five Pakistani traders, every export transaction referred to a different product type. A comparison of individual NV, as determined for these companies with individual EP to the Union on a transaction by transaction basis, was therefore made in respect of these Pakistani exporters/producers.<sup>13</sup>

The comparison presented the presence of dumping in relation to all exporters which completely participated in the inquiry. The provisional dumping margins presented as a proportion of export price at Union market was calculated at the following rate: Al-Abid Silk Mills Ltd, 8.2%, A1 Abid Export (Pvt) Ltd, 8.2%, Al-Karam Textile Mills (Pvt) Ltd, 2.6%, Fateh Textile Mills Ltd, 7.9%, Gul Ahmed Textile Mills Ltd, 0.2% (*de minimis*), Excel Textile Mills Ltd, 0.2% (*de minimis*), Mohammed Farooq Textile Mills Ltd, 6.6%.<sup>14</sup>

The average dumping margin of the manufacturers in the sample, weighted on the premise of their export turnover to the Union, was ascribed to the collaborating traders not chosen in the sample. While figuring the average dumping margin *de minimis* dumping margins were neglected as per Article 9 (6) of the regulation. The average provisional dumping margin for Pakistan was computed at the rate of 6.5% of export price.<sup>15</sup>

For non-collaborating manufacturers (as per Article 18 of the regulation), dumping margin was resolved on the premise of the available facts. The

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<sup>11</sup> Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped or subsidised imports by the countries which are not member of European Community, OJ L56, 1996, 1, art 2(8)

<sup>12</sup> Commission Regulation (EC) No 1069/97, Para 39-45

<sup>13</sup> Ibid, Para 46

<sup>14</sup> Ibid, Para 49

<sup>15</sup> Ibid, Para 50

Commission affirmed that it will cast a benefit for the non-co-operating traders for their non-co-operation if, as compare to the highest dumping margin calculated for the co-operated trader, a lower dumping margin is calculated for non-co-operatives. Along these lines, it was viewed as suitable to set the DM for non-coordinating traders in every concerned market at the level of the most elevated DM set up for a trader in each sample. Thus, the dumping margin for non-cooperating companies from Pakistan was set at 8.2% of export price.<sup>16</sup>

### **3.2.6 ALLEGATION OF INJURY**

In figuring out whether or not the Union business was enduring material injury, the Commission considered all the monetary pointers, including volume and share of dumped imports in the Union's market, costs of the imports concerned, circumstances of the Union business, and combined evaluation of the impacts of dumped imports.<sup>17</sup>

The Commission noted the decline in market share of Union producers and the total production of the EU. It also authenticated the tough circumstances in which the enduring Union industry was working. The point that these remaining local manufacturers remained capable of sustaining market share and production must not undermine the calculation of overall condition. Thus, the Commission came to the perspective that the Union business had endured material damage.<sup>18</sup>

### **3.2.7 ANALYSIS**

It is noted that there is no specific provision in the WTO Agreement or the basic regulation addressing the assessment criteria of 'product concerned'. The WTO law and practice has also promulgated that the definition and assessment criteria of 'like product' cannot be transposed to the assessment of 'product concerned'.<sup>19</sup> However, the EU Commission's practice reveals that it determines 'product

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<sup>16</sup> Commission Regulation (EC) No 1069/97, Para 51

<sup>17</sup> Ibid

<sup>18</sup> Ibid

<sup>19</sup> WT/DS337/R, WTO Panel Report, European Communities-Anti-Dumping Measures on Farmed Salmon from Norway, (adopted on 16 November 2007)  
[https://www.wto.org/english/tratop\\_e/dispu\\_e/337r\\_e.pdf](https://www.wto.org/english/tratop_e/dispu_e/337r_e.pdf)



concerned’ on these grounds: (a) physical, technical and chemical characteristics; (b) main use; (c) degree of interchange ability; (d) consumer perception; (e) manufacturing process and cost of production. However, the Commission is rarely found to consider (for assessment of product concerned and like product) factors other than physical, technical and chemical characteristics, and end users.<sup>20</sup>

In the current investigation also, the Commission established the comparability of product concerned (being manufactured in the Union) and like product (being sold on the Pakistani market). Although unbleached bed linen and printed bed linen went through different processing procedures and have differences in terms of yarn count, the Commission considered them as like products, as they share same technical characteristics. Thus, the Commission relied upon similar technical and physical characteristics, and ignored the differences in terms of production process etc. The Union institutions do not pay much attention to the difference of production process unless such difference affects the basic physical and technical characteristics of ‘like product’.

However, Van Bael and Bellis noted some instances where products having similar physical and technical characteristics were considered as distinguished on the basis of their end use. In other cases, the institutions have considered product concerned and like product as identical although they had different end uses. In the current investigation, exporters claimed that unbleached bed linen and printed bed linen have different end uses as, unlike the latter, the former is used in hotels and hospitals only. But the Commission did not find a difference in their end uses.<sup>21</sup>

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<sup>20</sup> Van Bael and Ballis, *EU Anti-Dumping and other Trade Defence Instruments* (5th Edition, Kluwer Law International 2011) 211, Marco Broncken and Natalie McNelis, ‘Rethinking the “Like Product” Definition in WTO Antidumping Law’ (1999) 33 (3) *Journal of World Trade* 73-91

<sup>21</sup> Ibid, 214; Nicholas Khan, Wolfgang Müller and Hans-Adolf Neumann, *EC Anti-Dumping Law-A Commentary on Regulation 384/96* (Chichester John Wiley & Sons Ltd. 1998)

It was established by the EU Courts in Case T-274/02<sup>22</sup> and Case C-351/04<sup>23</sup> that Article 2(11) of the basic regulation provides for a symmetrical method and an asymmetrical method for the computation of DM. The investigative body could not, however, use both of them at the same time. They also ruled that the practice zeroing of does not find any basis from Article 2(11) of the basic regulation.

The review of the investigation establishes that the EU Commission unduly had recourse to zeroing. Article 2(11) of the basic regulation demands to compare average constructed NV with the average export price. Conversely, the EU Commission, while calculating average dumping margin, ignored the transactions where normal value was found to be higher than the export price.

Zeroing may be practiced in various ways through the calculation of dumping margin in the investigation procedure. As Merit Janow and Robert Staiger have established, it is difficult to figure out the economic merits of zeroing because it is unclear why dumping should be condemned in the first place.<sup>24</sup> However, the author noted that neither Article 2 of the basic regulation nor the judgements of the EU Courts acknowledge the practice of zeroing. It follows that the Union institutions performed in contradiction to Article 2(11) of the basic regulation by applying, in the estimation of the dumping margin for the item under scrutiny, the act of ‘Zeroing’ to negative dumping margin for each of the concerned product type.

However, Van Bael and Bellis argue that the basic regulation does not necessitate the institutions to state reasons when weighted-average to a single transaction based methodology is used, although this is a requirement under the WTO Agreement. The question is whether the institutions state reasons when they use

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<sup>22</sup> Case T-274/02, *Ritek Corp. and Prodisc Technology Inc. v Council of the European Union* [2006] ECR II-04305, paras 54-58

<sup>23</sup> Case C-351/04, *Ikea Wholesale Ltd v Commissioners of Custom and Excise* [2007] ECR I-07723, Para 5

<sup>24</sup> Merit Janow and Robert Staiger, ‘EC – Bed Linen: European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India’ in Henrik Horn and Petros Mavroidis (eds), *The WTO Case Law of 2001: The American Law Institute Reporters’ Studies* (Cambridge University Press, 2003) 115; Jonathan Branton, ‘The E.C. washes its dirty bed linen - is the saga over yet?’ (2002) 8 (2) *International Trade Law and Regulation* 64, 66

weighted- average to a transaction based method. In the current investigation, however, they do not sufficiently state the reasons in this regard.<sup>25</sup>

Moreover, it was established by the EU Court in Case T-249/06<sup>26</sup>, Case T-444/11<sup>27</sup> and Case C-200/09<sup>28</sup> that the party who is claiming adjustments under Article 2(10) of Regulation No 384/96 in order to make the NV and the export price comparable for the purpose of determining the dumping margin must prove that his claim is justified and based on some significant evidence.

However, in this investigation it is not clear how the EU Commission established that the claimed amount of indirect taxes was exceeding the verifiable amounts actually borne in the cost of raw material. It is not known how the EU Commission verified the so-called verifiable indirect taxes. The investigating institutions are supposed to base their finding on some strong direct or circumstantial evidence. This regulation, however, lacks adequate reasons for assessment or ground to reject the claimed adjustment by Pakistani traders.

Following, the General Court held in Case T-407/06<sup>29</sup> that the basic regulation did not give the right to calculate individual dumping margin to the exporters who were not included in the sample. The researcher argues that although sometimes, due to the majority of exporters involved, it is difficult for the institutions to calculate individual dumping margin for all, however, it does not mean that while calculating average dumping margin for them, the institutions should ignore the *de minimis* dumping margin.

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<sup>25</sup> Above (n 20), 124

<sup>26</sup> Case T-249/06, *Interpipe Nikopolsky Seamless Tubes Plant Niko Tube ZAT (Interpipe Niko Tube ZAT) and Interpipe Nizhnedneprovsky Tube Rolling Plant VAT (Interpipe NTRP VAT) v Council of the European Union* [2009] ECR I-01335, Para 180

<sup>27</sup> Case T- 444/11, *Gold East Paper (Jiangsu) Co. Ltd and Gold Huasheng Paper (Suzhou Industrial Park) Co. Ltd v Council of the European Union* [2014] OJ C 298, Para 62-63

<sup>28</sup> Joined Cases C- 191/09 and Case C- 200/09, *Council of the European Union and Commission of the European Communities v Interpipe Nikopolsky Seamless Tubes Plant Niko Tube ZAT (Interpipe Niko Tube ZAT) and Interpipe Nizhnedneprovsky Tube Rolling Plant VAT (Interpipe NTRP VAT)* [2012] OJ C 193, Para 58

<sup>29</sup> Joined Cases T-407/06 and Case T-408/06, *Zhejiang Aokang Shoes Co., Ltd and Wenzhou Taima Shoes Co., Ltd v Council of the European Union* [2010] ECR II-00747, Para 85-91

This thesis objects to Article 9(6)<sup>30</sup> of the basic regulation, as it seems to be unjustified to ignore *de minimis* dumping margin through calculation of average dumping margin for co-operating exporters not part of the sample. The sample of seven manufacturers/exporters represents the whole cotton-type bed linen industry of Pakistan, therefore as the EU Commission calculated individual dumping margin for all seven exporters ranging from 8.2% to 0.2%, in the same way individual dumping margin should also be calculated for the cooperating companies that were not part of the sample.<sup>31</sup>

There may be many companies like Excel Textile Mills Ltd or Gul Ahmed Textiles Ltd having *de minimis* dumping margin. Therefore, by excluding the *de minimis* dumping margin while calculating average dumping margin for co-operating exporters not part of the sample, the EU Commission may have prejudiced other companies having dumping margins less than 6.5%, or which are not dumping on the EU market at all. Apparently there is no logical reason for neglecting the *de minimis* dumping margin.<sup>32</sup>

Moreover, it also invalidates the sample created by the EU Commission for the purpose of the investigation. This sample of seven companies represented more than 35% of Pakistan's bed linen export industry. But as for the purpose of calculation of average dumping margin for companies outside the sample, EU Commission has ignored the *de minimis* dumping margin of two companies out of seven in the sample. Now the question may arise, what was the representative value of the rest of the sample comprising five companies after striking out two companies from the original sample?

There may be multiple possibilities in this regard, supposedly one of them may be that the export magnitude of the companies having *de minimis* dumping margin were representing only 3% of the Pakistani export to the EU market. In this case the remaining sample of five companies may still be considered reliable, as they still represent 32% of Pakistani bed linen export to the EU. But in another

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<sup>30</sup> Council Regulation (EC) No 384/96, art 9(6)

<sup>31</sup> Commission Regulation (EC) No 1069/97

<sup>32</sup> Ibid

proposition if these two exporters having *de minimis* dumping margin constitute 15% of the Pakistani export to EU, then it means that the EU Commission is calculating the average dumping margin for the rest of 65% of traders (supposing all of them were cooperating) on the basis of sampled exporters representing only 20% of Pakistani export.

The researcher, however, contends that the latter situation may raise serious questions of fairness and consistency of proceedings, especially for those 65% cooperating exporters not part of the sample. Therefore, this thesis strongly disagrees with the content of Article 9(6) of the basic regulation, and recommends the inclusion of *de minimis* dumping margin while calculating average dumping margin for cooperating traders. And cooperating traders should not be prejudiced for their cooperation.

In Cases T-633/11,<sup>33</sup> T-462/04<sup>34</sup> and Case T-413/03,<sup>35</sup> the General Court notes that regard for the rights ensured by the EU legal framework is considerably significant, especially where the EU administrative institutions have wide arbitrary powers. Those guarantees include, in particular, the privilege of the individual concerned to make his perspectives known, the obligation of the competent authority to look deliberately and un-biasedly at all the important parts of the individual case and to have an adequately reasoned decision.

Within the meaning of the above-mentioned cases it is found that the EU Commission misinterpreted Article 2(6) (a) of the basic regulation, whereby it used the reported SG&A costs of a single trader to calculate the normal value of other traders, as their domestic sale was not found to be in ordinary course of business. However, Article 2(6) (a) only authorises to use average SG&A cost reported by other exporters and traders. Thus it could not base upon the SG&A cost as reported by the single exporter, because instead of singular, plural term is

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<sup>33</sup> Case T- 633/11, *Guangdong Kito Ceramics Co. Ltd v Council of the European Union* [2014] OJ C 32, Para 43

<sup>34</sup> Case T-462/04, *HEG Ltd and Graphite India Ltd v Council of the European Union* [2008] ECR II-03685, Para 68

<sup>35</sup> Case T-413/03 *Shandong Reipu Biochemicals Co. Ltd v Council of the European Union* [2006] ECR II-02243, Para 63

used in the said Article. And where the meaning and text of the legislation is clear, recourse should not be made to its reasoning.

According to Van Bael and Bellis, the average SG&A costs should be constructed on the basis of all transactions of the exporting industry regardless of whether they are profitable or non-profitable. They noted that the basic regulation leaves space for the EU Commission and the Council to leave out sales not made in the ordinary course of trade.<sup>36</sup>

### **3.3 IMPOSITION OF DEFINITIVE AD DUTY ON PAKISTANI COTTON-TYPE BED LINEN THROUGH (EC) 2398/97**

Following the imposition of provisional AD duty, it was transformed in to definitive measures through Council Regulation (EC) 2398/97.

#### **3.3.1 NORMAL VALUE**

A Pakistani exporter claimed that the costs of one of material incorporated in the product concerned includes its own SG&A costs thus, for the purpose of construction of normal value, the SG&A costs of the material incorporated reported by the exporter should be deducted from the SG&A cost of the product concerned as a whole. Otherwise, double counting of SG&A costs will tend to calculate higher normal value.<sup>37</sup>

#### **3.3.2 COMPARISON**

The adjustments made by the Commission for all import charges and duties born by the product concerned or materials physically incorporated in the product concerned were challenged by all Pakistani traders, when product concerned was expected to be used in Pakistan and reimbursed on export of the product under investigation in accordance with the Pakistani legislation. They argued that the

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<sup>36</sup> Above (n 20), 74

<sup>37</sup> Council Regulation (EC) No 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan [1997] OJ L 332/1, Para 14-17

rate of adjustment should be expressed in the form of percentage of the production charges and then it should be deducted from the constructed normal value.<sup>38</sup>

The Commission denied the plea stating that the calculation of adjustment rate on the basis of production charges of the product concerned could only be applied on the appropriate grounds; as normal value is the domestic price of the product concerned therefore, the argument could not be accepted.<sup>39</sup>

### **3.3.3 DUMPING MARGIN**

As per the provisional regulation, and after review, the NV was compared with the EP, the comparison conducted showed the existence of dumping margin regarding all transactions subject to investigation. The Commission calculated the dumping margin as percentage of import price of the product concerned born by the Union importers on the Union borders which is described as follows:

Al-Abid Silk Mills Ltd 6.7%, A1 Abid Export (Pvt) Ltd 6.7%, Al-Karam Textile Mills Ltd 1.3% (*de minimis*), Fateh Textile Mills Ltd 6.3%, Gul Ahmed Textile Mills 0.1% (*de minimis*) Ltd, Excel Textile Mills Ltd 0.1% (*de minimis*), Mohammad Farooq Textile Mills Ltd 1.8% (*de minimis*).<sup>40</sup>

For those Pakistani traders and exporters who were co-operating but could not made part of sample, an average dumping margin was calculated for them based upon overall average of individual dumping margin of sampled traders. For the purpose of calculation of average dumping margin, the *de minimis* dumping margins calculated for certain sampled exporters were ignored. The Commission claimed that it did so within the meaning of Article 9(6) of the basic regulation. The definitive dumping margin for Pakistan was calculated at the rate 6.4% of export price.<sup>41</sup>

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<sup>38</sup> Ibid, Para 25-26

<sup>39</sup> Ibid, Para 27

<sup>40</sup> Ibid, Para 29

<sup>41</sup> Ibid, Para 30

### 3.3.4 ANALYSIS

However, it is a customary practice of the EU institutions that if there is any compensatory arrangement among exporter and importer regarding the export price, then EU institutions calculate the export price by themselves as they calculate the normal value. There was evidence about such compensatory arrangements between Pakistani exporter and European importer. Therefore, the EU institution was rightly obliged by the basic regulation to consider such export price as unreliable.

The objective of the adjustments to normal value is to ensure fair comparison between NV and EP at the same level of trade by adjusting the factors which affect price comparability. The burden of proof lies on the party, which claims for upward or downward adjustment. The same was established in Cases T-88/98 and C-191/09,<sup>42</sup> that where a producer claims that an adjustment of the normal value, in principle downward, or an adjustment of the export price, logically upward, applies, it is for that operator to indicate and to establish that the conditions for granting such an adjustment are satisfied.<sup>43</sup>

This objection was raised by all Pakistani exporters during the course of provisional measures. But the EU Commission adjusted normal value (as far as it considered it justified) for indirect taxes borne by physical raw material incorporated in the product concerned, regardless of the evidence produced by Pakistani exporters in the form of refund receipts of import duties borne by the product concerned issued by the Government of Pakistan.

It is a settled rule established by the case laws that if investigative bodies reject any adjustment to normal value requested by concerned parties, they should have diligent reasons behind that. Czako *et al.* argue that although the basic regulation provides for adjustments to the NM and EP in order to ensure fair comparison

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<sup>42</sup> Joined Cases C-191/09 and Case C-200/09, *Council of the European Union and Commission of the European Communities v Interpipe Nikopolsky Seamless Tubes Plant Niko Tube ZAT (Interpipe Niko Tube ZAT) and Interpipe Nizhnedneprovsky Tube Rolling Plant VAT (Interpipe NTRP VAT)* [2012] OJ C 193, Para 58

<sup>43</sup> Case T-88/98, *Kundan Industries Ltd and Tata International Ltd v Council of the European Union* [2002] ECR II-04897, Para 96



among them, it does not provide any guideline regarding how these adjustments should be made. This means that investigative authorities have wide discretion to decide about it.<sup>44</sup>

However, the Commission's statement during the course of provisional measures that the reimbursement of indirect taxes by the government of Pakistan to Pakistani exporters seems to be higher than actual indirect taxes paid by Pakistani exporters, seems to be too vague, as the EU Commission does not refer to the reasons of such belief in the presence of refund receipts issued by government of Pakistan.

The researcher suggests the amendment of Article 9(6) of the basic regulation and the relevant provision from the WTO Agreement, as it prejudices the exporters and strongly favours the country imposing duties. As in this case, out of a sample of seven exporters from Pakistan, four exporters have *de minimis* dumping margin, while only three (or in another way only two exporters, as Al Abid Silk and Al Albid Export are the same group of companies) have significant dumping margin. Therefore, it seems unjustified to calculate average dumping margin while ignoring *de minimis* dumping margin regardless of the possibility that the companies having *de minimis* dumping margin may have representative export from Pakistan probably constituting more than 50% of export from Pakistan.

In this case, for example, three exporters whose dumping margin is used to calculate the average dumping margin collectively represent only 15% of Pakistani exports to the EU. And the remaining four exporters out of the sample having *de minimis* dumping margin represent more than 35% of Pakistani bed linen exports to the EU. Then it means that the Commission calculated average dumping margin for the rest of the cooperating exporters representing about 50% of export, from Pakistan on the basis of three exporters having around 15% of export while ignoring those having 35% export.

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<sup>44</sup> Judith Czako, Johan Human and Jorge Miranda, *A Handbook on Anti-dumping Investigation* (Cambridge University Press 2003) 119

### **3.4 TERMINATION OF PROCEEDINGS WITH REGARD TO IMPORTS OF BED LINEN FROM PAKISTAN**

After the imposition of definitive AD measures, India challenged the EU Commission's calculation of average dumping margin and normal value. It alleged that the EU Commission has applied 'Zeroing' while calculating average dumping margin. The WTO Appellate Panel took action in this case of India against the EU, and declared it against the principles of free and fair trade, which was basically the objective behind the enforcement of AD laws.<sup>45</sup> Following the verdict of the WTO Appellate Panel in this case, the Council, by Regulation (EC) No 1644/2001, considered it appropriate to amend and suspend the definitive AD duty on bed linen importing from India.<sup>46</sup>

The Council also decided to reconsider the calculation of dumping margin in the light of the EU panel report and to determine whether, in the absence of the application of zeroing, there was any dumping at all. All other calculation methods used are those applied in the original inquiry. Pursuant to the first sentence of Article 2(6), (SG&A) costs and profits were used to construct normal value, since merely one out of the five manufacturers in the main sample for Pakistan had representative global local sales, and the profitable domestic types constituted less than 80% but more than 10% of entire local sales.<sup>47</sup>

For the other four exporters, the amount for SG&A and profits applied to create normal value were the weighted average of the actual amount earned by the exporter with representative global local sales mentioned above and a company in the reserve sample which had also representative global domestic sales. It ought to be noticed that while assessing the reasonable profit margin for other four

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<sup>45</sup> WT/DS141/AB/R, European Communities-Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India, (adopted March 12 2001)  
[https://www.wto.org/english/tratop\\_e/dispu\\_e/141\\_rw\\_a\\_e.pdf](https://www.wto.org/english/tratop_e/dispu_e/141_rw_a_e.pdf)

<sup>46</sup> Council Regulation (EC) No 160/2002 amending Council Regulation (EC) No 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan, and terminating the proceeding with regard to imports originating in Pakistan [2002] OJ L 26/1, Para 2-4

<sup>47</sup> Ibid, Para 9

exporters involved, those sales which were not made in accordance of ordinary course of trade were not eliminated.<sup>48</sup>

No changes have been necessary as far as the original findings regarding the export price and adjustments are concerned. The export price by type was compared with constructed normal value by type. Taking account of the legal interpretations made in the reports, no 'Zeroing' was applied in the revised computation of the overall dumping margin for each sampled company.<sup>49</sup>

The reviewed calculation illustrates that no dumping exists for exports of the goods concerned exported by any sampled exporters in Pakistan during the inquiry period. Resultantly, the proceeding should be dismissed for imports of the concerned product manufactured in Pakistan. It ought to be noted that there would also be no dumping if sales not made in the ordinary course of trade had been excluded in the determination of constructed NV based upon the method set out in Article 2(6) (a) of the basic regulation.<sup>50</sup> Thus, the AD investigation about bed-linen being imported from Pakistan was ended.

### **3.4.1 ANALYSIS**

The gradual decrease of the dumping margin through provisional measures to the definitive measures, and then ultimate termination of proceedings due to the non-existence of the alleged dumping, is clear evidence that Commission's calculations of normal value and dumping margin were weak and unreliable.

Kaldes has explained the implications of the EU's action to challenge the US's 11 different investigations where zeroing practice was used in order to establish alleged dumped imports originating from the EU. He has noted the fall of dumping margin in most cases, when DM was calculated without having recourse to zeroing.<sup>51</sup> Some of the examples quoted by him are as follows:

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<sup>48</sup> Council Regulation (EC) No 160/2002, Para 10

<sup>49</sup> Ibid, Para 11

<sup>50</sup> Ibid, Para 12-13

<sup>51</sup> Peter Kaldes, 'US: implementation of EC Zeroing decision' (2007) 13(5) International Trade Law and Regulation 42, 43

- (i) Corus Staal CV's (exporter's) dumping margin decreased from 2.59% to zero, in the case of alleged dumped imports of Certain Hot-rolled Carbon Steel from the Netherlands. Similarly
- (ii) UGITECH SA's dumping margin decreased from 3.9% to zero in the case of alleged dumped imports of Stainless Steel Bar from France.<sup>52</sup>

However, the outcome of the current investigation, along with the evidence and examples presented by Kaldes, established that the practice of zeroing tends to calculate inflated and artificial dumping margins for foreign exporters.

Herrmann argued that, in the past, the WTO Panels considered a legitimate method of calculating dumping margin. However, the current case (Bed Linen) is the very first of its kind where the appellate body reversed the jurisprudence of the Panel. He further argued that although the AB has clearly stopped the practice of 'zeroing' in cases where weighted average, EP-weighted average NV methodology is used, it does not address the application of zeroing in asymmetrical methods of calculation of dumping margin. However, it is noted that, in other later cases, through repeated reverse of the Panel's findings, the AB declared the practice illegal in other cases as well.<sup>53</sup>

European court of justice has put an end on the use of 'zeroing' by the European investigative authorities. Hermann did not find any circumstances where this practice could be considered as fair at least within the meaning of the basic regulation as it stands.<sup>54</sup>

It could be established that the export of cotton-type bed linen was not dumped instead the EU Commission is found to use AD measures against competitive trade from Pakistan, although AD laws are expected to be used against unfair

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<sup>52</sup> Ibid

<sup>53</sup> Christoph Herrmann, 'Zeroing and Interpretation of the Basic Regulation in the Light of WTO Agreement' (2008) 45 CMLR 1507, 1517

<sup>54</sup> Christoph Herrmann, 'Case C-351/04, Ikea Whole sale Ltd. V Commissioners of Customs and Excise' Judgment of the Court of Justice of 27 September 2007, Second Chamber ECR I-7723, 45 (5) Common Market Law Review 1507, 1515

trade. Within the meaning of judgements of EU Courts in Case T-107/08<sup>55</sup> and Case T-192/08,<sup>56</sup> the EU institutions are required to act diligently by providing adequate reasons for their assessment. It could be argued that the EU's basic AD regulation does not authorise to practice zeroing; however it has been used frequently in the USA.

Furthermore, it could be stated that undue loss has been caused to Pakistan's textile industry through Council regulation (EC) 1069/97, as for a prolonged period of time firms had to pay an unnecessary AD duty at the rate of 6.5%, although there were no dumped imports at all. It is also noted that, the provisional AD duty imposed in 1997 later terminated in March 2002; therefore, the EU institutions took almost five years to rectify the erroneous calculation of dumping margin done by the EU Commission. However, the appropriate action of termination of proceedings is taken while the imposed duty was almost due to expire bearing the completion of five years' term.

This analysis corroborates the finding of Jonathan Branton, who established that the WTO's inconsistent investigations have been enforced for many years. Thus it has been unduly restricting foreign exporters' right of access to EU markets, causing them material monetary loss.<sup>57</sup> It is also important to note that it is the initiative of EU Courts which helped; otherwise the measures might not have been terminated by the Commission itself.

He also observed that the EU institutions adopted a discriminatory approach towards Pakistan and India, while reviewing regulation (EC) 1069/97, in the light of the WTO Panel. As the said regulation was challenged by India in the WTO, therefore it repealed the existing measures in respect of India, from the very date when they were adopted, i.e. 1997. However, in the case of Pakistani exporters,

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<sup>55</sup> Case T-107/08, *Transnational Company 'Kazchrome' AO and ENRC Marketing AG v Council of the European Union and European Commission* [2011] ECR II-08051, Para 31-40

<sup>56</sup> Case T-192/08, *Transnational Company 'Kazchrome' AO and ENRC Marketing AG v Council of the European Union* [2011] ECR II-07449, Para 256-257

<sup>57</sup> Jonathan Branton, 'The E.C. washes its dirty bed linen - is the saga over yet?' (2002) 8 (2) *International Trade Law and Regulation* 64, 67

they were only abrogated after review of existing measures, having effect from the date of conclusion of the review, i.e. 2002.<sup>58</sup>

### **3.5 CASE ANALYSIS OF CASE C-351/04**

#### **3.5.1 BRIEF FACTS OF THE CASE**

The Regulation challenged in court is (EC) No 2398/97<sup>59</sup>, which imposed definitive ADD on imports of bed linen from Pakistan, India and Egypt (discussed above in detail) In this case Ikea Wholesale Ltd. challenged decision of the commissioners of Customs and Excise where they refused to refund the duties paid by Ikea on imports of bed linen from Pakistan and India. The appellants argued that the Council Regulation (EC) 2398/97 should be declared void, as the Commission has used zeroing practice to calculate a dumping margin which is erroneous. They also argued that the EU Commission made a manifest error of calculation by calculating average dumping margin on the basis of data provided by a single exporter.<sup>60</sup>

However, they requested to the EU Court of Justice to revoke the said regulation, as it is inconsistent with the WTO Agreement<sup>61</sup> and the Council's basic regulation (EC) 384/96.<sup>62</sup>

#### **3.5.2 JUDGEMENT**

The Court established that, Article 2(6) (a) do not bar investigative authorities to use the SG&A costs and profit margin reported by a single exporter to calculate the profit margin and the SG&A costs of the other exporters whose reported profit margin or SG&A costs are not found to be reliable thus could not be verified

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<sup>58</sup> Ibid

<sup>59</sup> Council Regulation (EC) No 2398/97 of 28 November 1997 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan [1997] OJ L 332/1

<sup>60</sup> Case C-351/04, *Ikea Wholesale Ltd v Commissioners of Custom and Excise* [2007] ECR I-07723, Para 19-25

<sup>61</sup> WTO Agreement 1994

<sup>62</sup> Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1996] OJ L 056

within due time. Consequently, in order to construct the NV for other traders, the Council has not made any manifest error of assessment while relying on data related to the SG&A costs and profit margin reported by the single exporter. The sale which is not made in the ordinary course of trade can be discredited according to Article 1(1) and 2(1) of the basic regulation.<sup>63</sup>

The Court further ruled that for the purpose of calculation of DM, the investigative institutions are duty bound to compare the NV and EP fairly and transparently adjusting them where their comparability is affected. The investigative bodies have committed manifest error of assessment when it had recourse to zeroing for the calculation of DM. When this method is used during the comparison of weighted average EP and weighted average NV, it results in calculation of artificial and higher dumping margin for the traders involved, as zeroing is meant to avoid those transactions where normal value is equal or higher than the export price. Thus it does not mirror the actual magnitude of the dumping and injury caused to the local industry.

Resultantly, the court adjudicated that Article 1 of the Council Regulation 2398/97 levying definitive ADD on bed-linen being imported from India, Pakistan and Egypt is null and void being against the letter and spirit of the basic regulation.<sup>64</sup>

### **3.5.3 COMMENT**

Within the meaning of Article 2(1), the EU Commission may disregard the sale not made in the ordinary course of business, and it was also established in the judgement of Case T-304/11<sup>65</sup> and Case C-393/13<sup>66</sup> that where the reported normal value or profit margin by the exporter is even less than the cost of production, the Commission may disregard such data for the purpose of its calculation of normal value.

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<sup>63</sup> Above (n 60) Para 61-65

<sup>64</sup> Ibid, Para 70

<sup>65</sup> Case T- 304/11, *Alumina d.o.o v Council of the European Union*, [2013] OJ C 226, Para 24-25

<sup>66</sup> Case C-393/13 *Council of the European Union v Alumina d.o.o.* [2014] OJ C 274, Para 20

Durling and Nicely contend that, while assessing the normality of exporting countries' domestic market conditions and local price, the investigating bodies must pay attention to the differences between calculated normal value paid in the ordinary course of business, and the sales prices between the producer and consumers. There may be many reasons for these differences in price. They further argue that a simple comparison between actual price paid and calculated price in ordinary course of business may not properly explain the actual situation at ground level.<sup>67</sup>

It is to be noted that in Article 2(6) of the basic regulation the plural term 'other exporters or manufacturers' instead of singular term 'other exporter or manufacturer' is used. It clearly shows that the legislators of the basic regulation intended or meant to use data regarding SG&A and profit margin originating from multiple exporters. Therefore, it is the legal rule of interpretation that where the text and meaning of the provision is clear and understandable instead of being vague and ambiguous, recourse should not be made to the mischief rule of the interpretation.

But on the other hand if we only strictly stick to the meaning of Article 2(6),<sup>68</sup> the question may arise, what is the solution if only one exporter's domestic sales fall within the prescribed threshold, and thus only a single exporter's data regarding SG&A cost and profit margin is usable?. Definitely there is no other alternative available instead of using the available data from a single entity. It was established in Case T 633/11<sup>69</sup> that if limited information is available, or concerned exporters provide insufficient information, the Commission may have recourse to the facts available.

Therefore, it could be suggested that Article 2(6) of the basic regulation should be amended accordingly, and the plural expression should be changed with the single

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<sup>67</sup> James Durling and Matthew Nicely, *Understanding the WTO Anti-Dumping Agreement, Negotiation History and Subsequent Interpretation* (Cameron May 2002) 29; Henrik Andersen, *EU Dumping Determinations and WTO Law* (Kluwer law International 2009) 115

<sup>68</sup> Council Regulation (EC) No 384/96

<sup>69</sup> Case T-633/11, *Guangdong Kito Ceramics Co. Ltd v Council of the European Union* [2014] OJ C 32, Para 137-140



expression to allow the investigative bodies to use acceptable and reliable data available from single exporters. Although, the data related to profit margin and SG&A originating from more than one exporter provides an opportunity to cross-check it against each other and thus ensure its reliability, however, if NV is constructed based upon the data of a single entity it should be verified through other workable alternative ways, such as verification visits etc., before its use for calculation of average SG&A costs for other exporters, as it is going to be used on a large scale not only for the calculation of NV but also for the calculation of dumping margin for other manufacturers, and thus if it is not verified properly, it may seriously lead to the calculation of erroneous dumping margin for a large number of exporters.

Wenxi is very critical about using other manufacturers' data about SG&A cost and profit margin. He believes that it will tend to calculate artificial and higher dumping margin, as the investigative institutions will disregard the data leading to negative or lower dumping margin.<sup>70</sup>

It is to be noted that the practice of zeroing does not find any basis from the basic regulation, instead Article 2(11)<sup>71</sup> of the regulation demands from the institution to make a fair comparison between NV and EP. Conversely, in this case the Commission committed a manifest error of calculation which is beyond the meaning and intent of the basic regulation. The EU's AD law does not authorise to consider only the positive dumping trends while ignoring the negative AD trends. The consideration of only those transactions where NV is lower than EP, while ignoring transactions where NV is higher than export price is as unfair a practice. Majority of the WTO member states expressed their view that, is an unfair practice and its use will not help to attain the objective of AD law, which was to curb unfair trade instead it will help to block competitive trade.<sup>72</sup>

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<sup>70</sup> Wenxi Li, *Anti-Dumping Law of WTO/GATT and EC: Gradual Evolution of Anti-Dumping Law in Global Economic Integration* (Lund University 2001) 168

<sup>71</sup> Council Regulation (EC) No 384/96

<sup>72</sup> Christoph Hermann, 'Zeroing and Interpretation of the Basic Regulation in the Light of WTO Agreement' (2008) 45 CMLR 1507, 1518; Jonathan Branton, 'The E.C. washes its dirty bed linen - is the saga over yet?' (2002) 8 (2) International Trade Law and Regulation 64, 67

The EU has now changed its investigative mechanism in order to avoid zeroing, since the WTO appellate panel destroyed its scope of use in fresh or review investigations.<sup>73</sup> Hermann concluded that the European Court of Justice has apparently abolished the practice of zeroing to be exercised by the investigating authorities. Further, he thinks that under no possible circumstances could the practice of zeroing be considered as fair, at least not within the light of the Basic Regulation.<sup>74</sup>

However, Vermulst established that, since promulgation of the WTO Panel's report in the EC Bed Linen case, it no longer applies intra-model zeroing in its investigations. However, it continues to apply intra-model zeroing by comparing average NV to transaction-to-transaction based EP. In this process, it evaluates the price differences based upon different regions, customers and time of sale, and where the dumping margin will be high as compared to the dumping margin calculated without recourse to zeroing. This thesis agrees with his argument that although some researchers are of the view that zeroing is completely destroyed after the panel's report in the EC Bed linen case, recourse to intra-model zeroing is still possible. It can however, be abolished by further tightening of Article 2.4.2 of ADA.<sup>75</sup>

It was held in Case T-633/11<sup>76</sup> and Case T-462/04<sup>77</sup> that as the investigative bodies enjoy discretionary powers in investigation process due to the complex economic factors involved, therefore a huge duty of care is also attached to them to act diligently. It is observed that, in majority of AD cases, the EU courts have restrained from active judicial review of exercise of discretionary powers by the institutions.

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<sup>73</sup> Tania Voon, 'The End of Zeroing? Reflections Following the WTO Appellate Body's Latest Missive' (2007) <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1365543](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1365543)> accessed 10 January 2015

<sup>74</sup> Ibid, 1507, 1517

<sup>75</sup> Edwin Vermulst, 'The 10 Major Problems with the Anti-Dumping Instrument in the European Community' (2005) 39(1) Journal of World Trade 105, 107

<sup>76</sup> Above (n 69)

<sup>77</sup> Case T-462/04, *HEG Ltd and Graphite India Ltd v Council of the European Union* [2008] ECR II-03685, Para 68

In certain cases, the courts have found, declining to interfere due to the complex nature of AD investigations and the economic calculations involved therein. However, in other cases they have found to exercise their jurisdiction to re-evaluate the actions of the investigative authorities. Therefore, it is not clear where the EU courts draw a line, confirming where judicial intervention is required or unnecessary.

The judicial review should not be restrained only on account of the Commission's discretionary powers and its competence due to complex economic calculations, as in some cases the Commission may have departed from the express provisions of the applicable law. It might be in breach of general principles of law, e.g. equal treatment; in that case, the courts' role is crucial to rectify that.<sup>78</sup> The courts confine themselves to assess whether there is any manifest error of assessment committed by the institutions. However, the scope of 'manifest error of assessment' is unclear, as it has not been defined by the courts.

Fritzsche established that two set of cases can be figured out from what the courts refer to as cases involving complex economic and commercial appraisals. It includes assessment of a complex factual background to the case, and the establishment of complex facts and their assessment in the light of relevant law, where no special expert's assessment is involved. The connection between the necessity of complex economic assessments and necessarily limited judicial review has not been addressed by the courts.<sup>79</sup>

He further adds that perhaps the judges have a sense of complexity when deciding on the extent of judicial review of institutions' assessments. However, it remains debatable whether complexity of assessments should be considered as a reasonable ground for limited judicial review.<sup>80</sup> Advocate General Jacobs advances the view that a comprehensive judicial review is appropriate, as the EU

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<sup>78</sup> Alexander Fritzsche, 'Discretion, Scope of Judicial Review and Institutional Balance in European Law' (2010) 47 (2) Common Market Law Review 361, 369

<sup>79</sup> Ibid

<sup>80</sup> Ibid; Van Woude, 'The Court of First Instance: The First Three Years' (1993) 16 (2) Fordham Intl. L.J. 412, 468

courts share the duty of application of law in state aids with the national courts of member states. A limited review by the Union courts will put them in a difficult position, when they will require the national courts to apply a full economic analysis of all relevant factors in certain cases.<sup>81</sup>

### **3.6 DEFINITIVE ANTI-DUMPING DUTY IMPOSED ON COTTON-TYPE BED LINEN ORIGINATING FROM PAKISTAN**

On behalf of manufacturers constituting majority of the total Union manufacture of bed-linen, the proceeding was initiated by the Committee of the Cotton and Allied Textile Industries of the European Communities ‘Eurocoton’ or ‘the complainant’ in November 2002. The complaint contained sufficient evidence of material injury resulting and dumping of the said product, which was considered adequate to justify the start of an AD investigation.<sup>82</sup>

Sampling technique was applied considering the large number of exporters and importers involved. The six sampled organizations, which denoted more than 32% of Pakistan’s volume of exports of bed cloth to the Community amid the IP, were asked for to present an answer to the AD questionnaire. On the premise of the answers got from Union producers, the Commission chose five organisations in three member states. In the choice, the manufacturing and sales volume was considered, covering the most illustrative market size. In order to further scrutinize certain facets of dumping, injury, causal link and Union interest, no provisional AD duty was levied.<sup>83</sup>

#### **3.6.1 PRODUCT CONCERNED AND LIKE PRODUCT**

It was asserted by the Pakistani merchants that bleached bed linen sold to the Union ought not to be dealt with as product concerned; in this way it should be

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<sup>81</sup> Case C-222/04 *Ministero Dell’ Economia e delle Finanze v. Cassa di Risparmio di Firenze* [2006] ECR I-289, Opinion of Advocate General Jacobs, Para 111-112

<sup>82</sup> Commission Notice of initiation of an anti-dumping proceeding concerning imports of cotton-type bed linen originating in Pakistan [2002] OJ C 316/03

<sup>83</sup> Council Regulation (EC) No 397/2004 of 2 March 2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan [2004] OJ L 66/1, Para 7-16

excluded from the ambit of the inquiry. It was presented that bleached bed linen (i) has distinctive end users; (ii) is not substitutable by Union manufacture which depends on printed and/or coloured bed cloth; and (iii) is actually divergent from printed or coloured bed cloth.<sup>84</sup>

The Commission's examination uncovered that despite the fact that there are distinctive procedures for completing the fabrics (fading, colouring, and printing), results of all completions are substitutable and contend on the Community market. Furthermore, it was found that this type of the product concerned is not utilised solely by any specific group of consumers and that there is production of bleached bed linen in the Union. The Commission further contends that as all types have similar physical qualities and basically the same use, so every one of them constitutes one item within the end goal of this inquiry.<sup>85</sup>

It was analysed if bed linen manufactured in Pakistan and sold on the Union business sector and on the local market, and bed linen created by Union producers and sold on the Union business sector, were indistinguishable to the product concerned. Article 1(4)<sup>86</sup> of the basic regulation set the basic parameters for interpretation of the like product in this regard. The EU Commission, however, concluded that bed linen originating from Pakistan can be considered as like product within the meaning of Article 1(4).<sup>87</sup>

### **3.6.2 VERIFICATION VISIT**

The pre-verification examination of the answers presented by the exporting manufacturers demonstrated that the majority of the sampled trading manufacturers reported belittled costs which brought about impossible and unusually high profits for sales of the item concerned to the Union. By contrasting the export price and the cost of manufacture reported by every organization, profits on sales of the item concerned to the Union went from more than 20% to

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<sup>84</sup> Council Regulation (EC) No 397/2004, Para 22-24

<sup>85</sup> Above (n 83) Para 25

<sup>86</sup> Council Regulation (EC) No. 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1996] OJ L 056, art 1(4)

<sup>87</sup> Council Regulation (EC) 397/2004, Para 27

right around 40% per exporter, communicated as a rate of turnover, by and large more than 30%. This net revenue was in sharp difference to the 1.6% overall revenue on turnover for exports of other textile items, including fundamentally the same items (prepared fabric, table cloth, window ornaments) with comparative cost structures, sold likewise to the same sort of customers, or even to the same customers.<sup>88</sup>

The Commission has tried to check the exceptionally unrealistic figures reported in the answers. During check of the second exporter, the Commission got a unidentified life threatening letter actually tended to the Commission representatives. These circumstances considerably hindered the investigation. In this way, the verification visits must be impeded. Hence, it was only conceivable to complete an incomplete check at the premises of one exporter, while a full check at the premises of another foreign exporter was done. The fares of these two organizations speak to more than 50% of the aggregate CIF trade value to the Union of the examined foreign exporters.<sup>89</sup>

The verification of the first organisation affirmed that deceptive data was submitted with respect to the organisation's expenses and pricing policy. Along these lines, the Commission was compelled to reason that the data gave by the remaining selected exporters couldn't be confirmed, as the verification visits must be hindered. Thus the Commission established its conclusions based upon available information.<sup>90</sup>

According to Article 18(1),<sup>91</sup> fabricated or deceptive information will be overlooked, and findings may be based upon available facts. The Commission inspected the data accessible that would permit ascertaining the margin of dumping, i.e. the complaint; the replies of questionnaires given by the sampled foreign exporters and three other trading makers that had asked for individual

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<sup>88</sup> Ibid, Para 30

<sup>89</sup> Above (n 83) Para 35-36

<sup>90</sup> Ibid, Para 37

<sup>91</sup> Council Regulation (EC) No. 384/96, art 18(1)

examination in accordance with Article 17(3); data provided by a few invested individuals; and official import statistics from Eurostat.<sup>92</sup>

### **3.6.3 NORMAL VALUE**

As required by Article 2(2)<sup>93</sup>, the local sales of the like produce by the exporters concerned could not be used as a valid criteria to determine NV where the firms nominated in the sample had not local sales of the like product constituting at least 5% of export sales of the concerned product to the Union. In the absence of representative domestic sales made by other producers, NV was built by accumulating to the engineering cost of the exported types of the product concerned adequate profit margin and realistic sum for (SG&A) costs, determined according to Article 2(6) of fundamental regulation.<sup>94</sup>

The Commission asserted that since no real information for SG&A and profit margin related to manufacture and sales of the like item were accessible for any of the foreign exporter under inquiry or for some other known exporters or makers, and since no such data was accessible for the same general classification of items, there was no other alternative but to utilize any other adequate method as indicated by Article 2(6) (c) to set up an amount for SG&A<sup>95</sup> and for profits.<sup>96</sup>

Keeping in mind the end goal to decide a sum for SG&A costs and for profit, the average of the sums reported by each of the six organisations initially chose in the specimen for SG&A costs and for benefit on local sales to unrelated clients, was utilised. This information were viewed as a fitting premise since they related to local sales to irrelevant clients of textile items and they were the only information accessible for local sales in Pakistan. As required by Article 2(6) (c),<sup>97</sup> no information is available which could allow concluding that the profit so fixed

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<sup>92</sup> Council Regulation (EC) No 397/2004, Para 41

<sup>93</sup> Council Regulation (EC) No 384/96, art 2(2)

<sup>94</sup> Above (n 83) Para 53-54

<sup>95</sup> Sales General and Administrative costs

<sup>96</sup> Above (n 83) Para 61

<sup>97</sup> Council Regulation (EC) No 384/96, art 2(6) (c)

surpasses the profit usually earned by other manufacturers on sales of merchandises of the same general category in the local marketplace of Pakistan.<sup>98</sup>

#### **3.6.4 EXPORT PRICE**

The propriety of the export costs as reported by the foreign exporters was inspected. All the data accessible, including the partial verification visit completed in Pakistan and Eurostat data showed that these were precisely reported.<sup>99</sup> All exporters made their export sales to the Union straight to independent retailers. Their export prices were therefore determined according to Article 2(8)<sup>100</sup> based upon the prices factually waged by these independent importers.

#### **3.6.5 COMPARISON**

Due remittance in the form of adjustment was made pursuant to Article 2(10)<sup>101</sup> with the objective of guaranteeing a reasonable comparison among the export price and normal value. All exporters have asserted an adjustment for duty drawback under Article 2(10) (b). The Commission recognised the adjustment to the extent the sums requested were really borne by the like item and by materials physically consolidated inside, when expected for utilisation in the exporting state, and repaid in respect of the item exported to the Union.<sup>102</sup>

The exporters contended that the duty disadvantage allowance ought to be allowed for everything discounted by the Government of Pakistan, autonomously of whether duties had been paid by the trading makers or by their related suppliers of materials. Be that as it may, no proof was accessible that the materials purchased from nearby suppliers did bear any import charges or aberrant duties. The contention was subsequently dismisses.<sup>103</sup>

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<sup>98</sup> Above (n 83) Para 62

<sup>99</sup> Council Regulation (EC) No 397/2004, Para 63-64

<sup>100</sup> Council Regulation (EC) No. 384/96, art 2(8)

<sup>101</sup> Ibid, article 2(10)

<sup>102</sup> Council Regulation (EC) No 397/2004, Para 66-67

<sup>103</sup> Ibid, Para 68



### 3.6.6 DUMPING MARGIN

The data presented by invested parties, and used to amend the reported expenses for each of the six selected traders, contained references to normal overall revenue on export of the item concerned of 2% to 5%. This conclusion was likewise affirmed by the exporters themselves. It was considered that this net revenue, though valid for all exporters, but would not inexorably mirror the net revenue of each of the organizations exclusively.<sup>104</sup>

In the light of the fact that the information rendered allowed the Commission just to process an ordinary overall revenue on exports of the thing concerned, it was seen as suitable to figure one general dumping margin applicable to all the exporters. The exporters asserted that an individual dumping margin ought to have been built up for every organisation separately. It was expressed that the estimations demonstrated that the Commission could figure an individual dumping margin.<sup>105</sup>

The Commission asserted that the need to ascertain an average dumping margin is the outcome of the accompanying contemplations. The overall revenues on export sales provided by the foreign exporters in their answers to the questionnaires could not be utilised and had in this manner to be adjusted. This adjustment was finished by utilizing for all exporters overall revenue on fare offers of 3.5%. The fact that a normal profit margin must be utilised as facts available for all traders was a noteworthy explanation behind touching base at the conclusion that it is improper to indicate singular duty rates for every individual trader.<sup>106</sup>

In pursuance to Article 2(11), the amount of dumping was determined based upon the comparison of the weighted average export price of each produce type with the weighted normal value of the equivalent produce type. On this basis, the

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<sup>104</sup> Above (n 83) Para 49

<sup>105</sup> Ibid, Para 49

<sup>106</sup> Ibid, Para 51

overall average dumping margin applicable to all Pakistani exporting producers was 13.1%, of the export price at Union market.<sup>107</sup>

### **3.6.7 CAUSAL LINK**

Effects of other known factors including, subsidized imports originating in India, contraction of demand, imports originating in third countries other than India and Pakistan, imports by the Community industry were analysed to establish the causal link between alleged injury and dumped imports. Similarly, the export performance by the Union industry, and the productivity of the Union industry were also observed.<sup>108</sup>

### **3.6.8 UNDERTAKING**

The Pakistani traders have displayed a proposition for a price undertaking. Notwithstanding, there were more than 170 exporters included in this procedure, and bed linen is classified by many various item sorts, with a few qualities not unquestionably evident upon importation. To build up significant minimum prices for every item type which could be appropriately observed by the Commission is however difficult to do. The large number of traders would also reduce the monitoring of a price undertaking unpractical. Under these conditions, it was considered that a price undertaking was unviable and should not be acknowledged.<sup>109</sup>

### **3.6.9 ANALYSIS**

Thus the Commission's decision to consider unbleached and bleached cotton-type bed linen under the same product category is in conformity with the Article 1(4) of the basic regulation. In Case T-394/13<sup>110</sup> the applicant objected the grouping of product concerned, as done by the Commission alleging that, it will led to comparison of products which have considerably different characteristics. The EU

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<sup>107</sup> Council Regulation (EC) No 397/2004, art 1 (1) and 1 (2)

<sup>108</sup> Above (n 83) Para 116

<sup>109</sup> Ibid, Para 135-137

<sup>110</sup> Case T-394/13, *Photo USA Electronic Graphic, Inc. v Council of the European Union* [2014] OJ C 274, Para 59

institutions can also form a group of products for the purpose of fair comparison, where a large number of different products are involved in an investigation.

Moreover, under the meaning of Article 1(4) of the basic regulation, a product could be considered like product if it met with either of the following two conditions:

1. It is identical to the product concerned in all respects; or
2. It is not identical but has significantly similar characteristics.

It is found that although bleached, dyed and printed bed linen are not identical, they met with the second part of the Article 1(4), as commission claimed that, they have meaningfully similar characteristics. However, none of the Pakistani exporters later challenged the Commission's claim at any point throughout the investigation.

While defining the product having similar characteristics, the EU Court established in Case T-314/06<sup>111</sup> that the European Union institutions may take account of a number of factors, for example: the physical, technical and chemical characteristics of the products; and their use, interchange ability, consumer perception, distribution channels, manufacturing process, costs of production and quality. However, the EU Commission's findings reveal that the product concerned and the like product involved in this investigation share all the above-mentioned features.

According to Stanbrook *et al.*, despite the existence of minor physical and technical differences between Union product and alleged dumped product, the institutions may consider them as one, or like products. These minor differences include the difference in shape or level of impurities of two pocket lighters, or whether they are made of nylon or plastic, unless they do not affect end users.<sup>112</sup> However it was also argued that outdoor shoes and slippers could not be

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<sup>111</sup> Case T-314/06, *Whirlpool Europe Srl v Council of the European Union* [2010] ECR II-05005, Para 138-141

<sup>112</sup> Clive Stanbrook and Philip Bentley, *Dumping and Subsidies: Law and Procedures Governing the Imposition of Anti-Dumping and Countervailing Duties in the European Community* (3<sup>rd</sup> edn, Kluwer Law International 1996) 104-105

considered as a like product, as they are not interchangeable due to their different end use.<sup>113</sup>

The determination of like product is one of the most difficult and controversial tasks in the AD investigation, as sometimes the Commission's excessive discretion leads to absurd results, comparing apples with bananas. In the absence of the sale of identical product in the domestic market, it becomes difficult for the investigative authorities to choose a product having the same characteristics. Depending on the Union industry's interest, the definition of like product can be too narrow or too broad.<sup>114</sup>

In cases where it is defined broadly, the Commission has to examine a large group of products, and this may create difficulty for the Union industry in terms of proving injury. As injury caused to different groups of Union industry may have originated from different groups of products, it may become difficult for them to prove injury. The narrow definition of like product is less problematic; however, it may offer an opportunity of circumvention from one group of products to another, to avoid ADD.<sup>115</sup>

The basic regulation is silent about the situation, where 'product concerned' and 'like product' have the same physical characteristics but are made in different ways. In this area, the Commission decides according to its wide discretionary powers. However, it is established principle that, if a product has to go through a number of processing procedures and if that processing adds some value, then processed product and other product must be differentiated. But in the investigation under discussion and some other cases, the Commission has

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<sup>113</sup> Van Bael and Ballis, *EU Anti-Dumping and other Trade Defence Instruments* (5th Edition, Kluwer Law International 2011) 162

<sup>114</sup> Nicholas Khan, Wolfgang Müller and Hans-Adolf Neumann, *EC Anti-Dumping Law- A Commentary on Regulation 384/96* (Chichester John Wiley & Sons Ltd. 1998) 43

<sup>115</sup> Arturas Mickus, 'Shortcomings of EU Anti-Dumping Law and Policy' (2002) 4(4) *European Journal of Law Reform* 525, 535

considered as like products, products which have the same characteristics but which went through different processing procedures and had different designs.<sup>116</sup>

If no more than a simple processing procedure is involved, then the two products can be considered as like products; however, if the processing procedure has added significant value, and thus made it technologically advanced, then it ought not to be considered as like product. In this case, bleached bed linen is not comparable with printed bed linen, as printed bed linen has added value and went through a significant processing procedure. Similarly, in another case, the Commission committed a manifest error of assessment by comparing slippers with shoes, although they have different uses and different manufacturing characteristics.<sup>117</sup>

This dissertation doubts the manufacturing cost reported by Pakistani exporters to the EU Commission. The Commission's argument is strong that it is highly improbable that Pakistani exporters are earning average 30% profit on exports of bed linen to the EU, while on the other hand the profit margin for curtains and table linen (having significantly same characteristics) is around 1.6%. The difference of 5% or even 7% may be considerable, but such a huge difference of profit margin of around 28% definitely affirms the Commission's claim that Pakistani exporters reported erroneous figures about their profit margin.

The General Court in Case T-406/09<sup>118</sup> established that where the information submitted is not perfect in all regards, it should however not be dismissed, given that it is not such as to bring about undue trouble in arriving at a sensibly exact finding. But unlike the circumstances mentioned in the above judgement, in the current investigation, the information provided by the Pakistani traders was unreliable, and might cause a reasonable delay to reach an accurate calculation and conclusion for the EU Commission.

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<sup>116</sup> Ibid, Marco Broncken and Natalie McNelis, 'Rethinking the "Like Product" Definition in WTO Antidumping Law' (1999) 33 (3) Journal of World Trade 73, 78

<sup>117</sup> Above (n 115)

<sup>118</sup> Case T-406/09, *Donau Chemie AG v European Commission* [2014] OJ C 202

It was ruled by the EU Courts in Case T-407/06<sup>119</sup> that the sample must be representative within the meaning of Article 17(1). As far as the current investigation is concerned, initially a sample of six manufacturers was representing about 32% of exports of Pakistani manufactured bed linen to the EU. However, a sample representing only 32% of the bed linen producing industry of Pakistan might not be measured largest representative volume according to Article 17(1),<sup>120</sup> as it demands that the sample must be statistically effective, developed on the premise of the biggest representative volume of generation, sales or exports which can sensibly be explored inside of the time accessible or on the premise of data accessible at the time of the determination.<sup>121</sup>

It is, however, recommended that Article 17(1) of the basic regulation only provides a general criterion for creation of a sample that is a sample should be sufficiently representative. It does not, however, pin-point the representation threshold for representation of domestic industry of the country under investigation as it is provided in Article 5(4), whereby it is required that Union industry representing at least 50% of the production of product concerned must support the continuation of the investigation. In the same way for the purpose of sampling, article 17(1) should provide that a sample should compose of traders having at least 50% of the total production of the product concerned in the domestic market of the country under investigation.

Vermulst observed that the EU Commission uses different methodologies for sampling interested parties, as it also sends a sampling questionnaire to EU producers. However, similar sampling criteria should be used for all interested parties, as diverging sampling criteria is against WTO principles.<sup>122</sup>

It is noted that previously (e.g. in the current case and in *footwear with textile upper* case) for the purpose of sampling, the Commission used to consider the

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<sup>119</sup> Joined Cases T-407/06 and Case T-408/06, *Zhejiang Aokang Shoes Co., Ltd and Wenzhou Taima Shoes Co., Ltd v Council of the European Union* [2010] ECR II-00747, Para 84

<sup>120</sup> Council Regulation (EC) No 384/96

<sup>121</sup> Ibid, art 17(1)

<sup>122</sup> Edwin Vermulst, *EU Anti-dumping Law and Practice* (2<sup>nd</sup> edition, Sweet & Maxwell 2010) 86

eligibility and/or ineligibility of foreign exporters on the basis of their detailed reply to the questionnaire. Thus it causes an enormous burden for foreign exporters. However, according to the current practice, sampling can be done on the basis of initial information obtained from foreign exporters within 15 days of publication of notices.<sup>123</sup>

The calculation of highest dumping margin for exporters who do not properly co-operate is a valid approach, as calculation of weighted average dumping margin for them will be rewarding them for their non-cooperation. However, it may cause problems, where product concerned is encompassed of many types, for example ball bearings and pipe fittings. In this case, dumping margin for co-operating exporters is calculated on the basis of weighted average dumping margin of all types of product involved.<sup>124</sup> However, for non-cooperating exporters it is calculated on the basis of highest DM of an individual type. The Commission cannot be blamed for that, as it is the result of companies' choice not to co-operate.<sup>125</sup>

In the current investigation, as, according to the Commission, Pakistani exporters furnished misleading information about the manufacturing costs and normal value of the product concerned, therefore, as an alternative, the EU Commission might have created a new sample, as provided by the Article 17(4). In case of non-cooperation by a substantial number of exporters in the sample, Article 17(4) of the basic regulation provides for a discretionary power to the Commission, to create a fresh sample. Although it is purely the discretion of the Commission, and thus cannot be claimed as a matter of right, however, for the purpose of precise calculation of profit margin and dumping margin, this step may be taken by the EU Commission, which it has not taken in this investigation. However, it has been established by the General Court in Case T-633/11<sup>126</sup> and Case T-462/04<sup>127</sup> that in

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<sup>123</sup> Ibid, 85

<sup>124</sup> Ibid, 40

<sup>125</sup> Themistoklis Giannakopoulos, *A Concise Guide to the EU Anti-dumping/anti-subsidies Procedures* (Kluwer Law International 2006) 95

<sup>126</sup> Case T-633/11, *Guangdong Kito Ceramics Co. Ltd v Council of the European Union* [2014] OJ C 32, Para 137-140

case of absence of concrete and precise data relating to the profit margin, institutions can make use of information available. Verification visits conducted at an early stage of the investigation benefit all interested parties, as they help to calculate accurate provisional duty rate.<sup>128</sup>

The verification visits could not be completed properly due to the improper security arrangements. Therefore, the information acquired through such defective and incomplete visits should not be used for calculating dumping margin and injury margin. Instead the Commission's findings should rest on the basis of available information in the form of complaint, reply to questionnaires, information submitted by several interested parties and official import statistics from Eurostat etc. only.

Alternatively, again although it cannot be claimed as a matter of right, as it is a discretionary power of the Commission, but due to the defective and incomplete verification visits at the premises of only two traders, verification visits might be conducted in other cities of Pakistan except Karachi, or alternatively they might be arranged even in a third country. However, Vermulst noted that verification visits at third countries are only possible if foreign firms give their consent and the proposed third country does not object.<sup>129</sup>

As far as calculation of average dumping margin is concerned, the Commission was duty bound to calculate individual dumping margin for all the traders, who are the part of the sample. The only exception to Article 17 (3) is available in respect of non-participant traders, for whom an average dumping margin can be calculated if a large number of non-participant traders are involved in the investigation.

However, in respect of sampled participants, the Commission is bound to calculate individual dumping margin by all means. And the same principle was

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<sup>127</sup> Case T-462/04, *HEG Ltd and Graphite India Ltd v Council of the European Union* [2005] OJ C 69, Para 161

<sup>128</sup> Above (n 122), 63

<sup>129</sup> Ibid



upheld by the General Court in Case T-407/06<sup>130</sup> that where sampling is used, the traders who are not included in the sample may request for individual treatment. However, the basic regulation does not give an unconditional right to the traders who not included in the sample, an unconditional right to the calculation of individual margin. However, it is the settled principle of law that, Commission must calculate individual dumping margin in respect of participant traders, however non participant traders cannot claim it as a matter of right.

As far as the Commission's argument that calculation of average dumping margin is concerned that due to the circumstances of the case and course of investigation (misleading information furnished by the Pakistani exporters regarding manufacturing costs and incomplete verification visits at the premises of participants due to security reasons) led to the calculation of average dumping margin, this thesis contends that if misleading information was furnished by the Pakistani exporters, then resampling could be done with reference to Article 17(4) of the basic regulation, or verification visits could be conducted on a third host country. Although, Article 18(1) provides that where misleading information is submitted to the Commission, it can make use of facts available but it does not mean that this provision allows the Commission to calculate average dumping margin for all exporters.

This dissertation establishes that this investigation generally, and calculation of dumping margin specifically, is poorly conducted. It may be said that not only the Commission but Pakistani traders are also responsible in this regard. Pakistani exporters provided misleading information, and it was their fault. Secondly, they could not ensure the proper security of the delegation conducting verification visits.

On the other hand, due to the insufficient information available, the Commission calculated average dumping margin for all; however, in these circumstances the Commission might have used the option to restructure the sample or arrange the

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<sup>130</sup> Joined Cases T-407/06 and Case T-408/06, *Zhejiang Aokang Shoes Co., Ltd and Wenzhou Taima Shoes Co., Ltd v Council of the European Union* [2010] ECR II-00747, Para 88

verification visit in a third country in order to calculate precise individual dumping margin.

It is justified to construct normal value by adding manufacturing cost, profit margin and SG&A costs of producers, as none of the participant producers had 5% representative domestic sale of like product. It was ruled by the General Court in Case T-304/11<sup>131</sup> that despite their low volume less than 5%, domestic sales may be made in the ordinary course of trade, if they nevertheless reflect the ordinary behaviour of the operators concerned. If normal value could not be calculated on the basis of actual price paid by consumers in domestic market, it should be constructed in a way that, as much as possible, it represents the domestic price of the product if its sale used to have been in ordinary course of trade.<sup>132</sup>

However, Article 2(3) and 2(6) have set the criteria that domestic sale representing at least 5% of the export can be used to calculate the NV. In recent practice, the EU institutions in some instances (for example in the current investigation) are also considering the domestic sales of like product, although it fails to fulfil the 5% representative threshold. According to Van Bael and Bellis the EU institutions rarely avoid the 5% representative rule.<sup>133</sup>

Nevertheless, this thesis contends that there was no need to use an average of SG&A costs instead individual SG&A costs, for every exporter as reported by him should be used. The Commission itself admitted in Para 56 of Council Regulation 397/ 2004 that SG&A costs were in line with the audited accounts of the exporters, hence no corrections were made to them.

Similarly, manufacturing cost of each trader may also be used individually instead of average, as the Commission claimed that a number of corrections, including the allocation of duty drawback and packing expenses, on the basis of the findings of the on-the-spot verifications and the analysis of the replies were made to the

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<sup>131</sup> Case T 304/11, *Alumina d.o.o. v Council of the European Union* [2013] OJ C 226, Para 25

<sup>132</sup> Case C-178/87 *Minolta Camera v Council* [1992] ECR I-1577, Para 17

<sup>133</sup> Above (n 113), 54-55

manufacturing cost. As it was corrected by the Commission accordingly, then there was no point to use average of production cost for the whole sample.

In the current investigation, the EU Commission rejected exporters' request for duty drawback adjustment to the NV. However, Vermulst noted that the Commission has applied a restrictive approach to allowable duty drawback adjustments to normal value. Duty drawback adjustments are rejected on the basis of physical incorporation grounds. Although ADA has strengthened duty drawback adjustments within the scope of fair comparison, the EU Commission's conclusion may, however, be challenged in the WTO Panel.<sup>134</sup>

Within the meaning of judgements in Case T-385/11,<sup>135</sup> Case T-107/08<sup>136</sup> and Case T-167/07,<sup>137</sup> the statement of reasons provided by the institutions for their decisions must be sufficiently clear so that the concerned party can defend their rights and judicature can appropriately review the conclusions drawn by the Commission. In Case T-310/12, the General Court annulled the contested regulation where it found that in light of inadequate statement of reasons about profit margin and adjustments to export price, the Commission could not provide sufficient statement of reasons about its injury margin calculation in the context of Article 296 TFEU.<sup>138</sup> However, in this case the Commission has not provided adequate statement of reasons for use of average SG&A costs, despite the fact that information regarding individual SG&A costs of Pakistani exporters was admitted by the Commission to be correct and thus can be used.

The EU Courts also held in Case C-166/95<sup>139</sup> that, lack of adequate statement of reasons about dumping and injury establishment procedures constitutes a matter

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<sup>134</sup> Edwin Vermulst, 'The 10 Major Problems with the Anti-Dumping Instrument in the European Community' (2005) 39(1) *Journal of World Trade* 105, 109

<sup>135</sup> Case T 385/11, *BP Products North America Inc. v Council of the European Union* [2014] OJ C 282, Para 157

<sup>136</sup> Case T-107/08, *Transnational Company 'Kazchrome' AO and ENRC Marketing AG v Council of the European Union and European Commission* [2011] ECR II-08051, Para 85

<sup>137</sup> Case T-167/07, *Far Eastern New Century v Council of the European Union* [2011] ECR II-00094, Para 100-103

<sup>138</sup> Case T 310/12, *Yuanping Changyuan Chemicals Co. Ltd, v Council of the European Union* [2015] OJ C 273, Para 201

<sup>139</sup> Case C-166/95, *Commission of the European Union v Daffix* [1997] ECR I-983, Para 24

of public interest, therefore, it must be raised by the EU Courts on their own motion. In Case C-56/93<sup>140</sup> and Case T-290/93<sup>141</sup>, it was upheld that, the question whether statement of reasons provided by administrative institutions meet the prescribed requirements of Article 296 TEFU, depends not only upon the wording context of the said Article but it also depends upon all legal rules governing the subject matter.

Mickus observed that the EU institutions' practices in AD matters lack in terms of transparency, e.g. interested parties do not have recourse to the detailed calculated methods of NV, EP and adjustments etc.<sup>142</sup> There is need of publication of more detailed information about investigations. Hearings are *ex parte*; details of legal representation are treated as confidential; similarly, verification visit reports are confidential. This lack of transparency grants excessive powers to the Commission.<sup>143</sup>

Concluding, it could be said that this investigation and the calculations of dumping margin and normal value as calculated in it are unreliable, as they are based on limited information. The researcher contends that its responsibility lies both on exporters and the EU Commissions. If the Pakistani exporters had not provided misleading information, or if the verification visits were not interrupted due to the security threat, the outcome of the investigation might be different. Similarly, if the EU Commission had resampled or arranged verification visits at a third country, it might be in better position to calculate individual dumping margin based on individual SG&A costs.

Lastly, it could be contended that in March 2002 the EU Council, by means of Council Regulation (EC) 160/2002, terminated the previously imposed AD duty through Commission Regulation (EC) 1069/97, as the EU Commission applied 'zeroing' for the purpose of calculation of dumping margin in the later

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<sup>140</sup> Case C-56/93, *Belgium v Commission* of the European Union [1996] ECR I-723, Para 86

<sup>141</sup> Case T-290/94, *Kaysersberg v Commission* of the European Union [1997] ECR II-2137, Para 150

<sup>142</sup> Arturas Mickus, 'Shortcomings of EU Anti-Dumping Law and Policy' (2002) 4 (4) European Journal of Law Reform 525, 533

<sup>143</sup> Above (n 134) 105, 106

investigation. Therefore, the Council had to review its calculation of dumping margin, as use of 'zeroing' was declared void by the WTO Panel. However, through review investigation (Council Regulation (EC) 160/2002 the Council terminated the existing measures as, excluding the practice, it found negative dumping margin for all Pakistani exporters.

Although in the case of withdrawal of complaint by the complainant, or termination of investigation without application of any protective measures, the complainant still has the right to file a fresh complaint, but in particular cases this may be regarded as harassment.<sup>144</sup>

Therefore, it is understandable that after a few months of termination of previous investigation, in September 2002, the EU Commission on complaint of Eurocoton once again initiated investigation of alleged dumping of the same product (cotton-type bed linen), and concluded it with calculation of positive dumping margin with rate of 11.3% of the export price. The researcher, however, found both actions (at the first instance termination of duty and initiation of fresh investigation) of the EU institution inconsistent with each other and it may be termed as harassment of foreign exporters.

### **3.7 PARTIAL INTERIM REVIEW OF PROVISIONAL MEASURES IMPOSED ON PAKISTANI TEXTILE EXPORTERS**

On 3 August 2004, in accordance with Article 11(3) of Council regulation (EC) 384/96, the Commission declared, in the wake of consulting with the Advisory Committee, the start of an ex officio restricted review. It was restricted to dumping, of the dumping duty levied by the definitive regulation. A notice of initiation of proceeding was issued to all concerned importers and exporters. Ninety-eight exporting producers replied to the questionnaires and were considered as co-operating. Given the large number of exporters, under Article

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<sup>144</sup> Edwin Vermulst, *EU Anti-dumping Law and Practice* (2<sup>nd</sup> edition, Sweet & Maxwell 2010) 27

17(1) of basic regulation a sample of eight Pakistani exporters, representative of 31% of Pakistan's exports to the Union, was designated.<sup>145</sup>

Twenty-two traders which were not included in the sample filed applications for the computation of an individual dumping margin. But due to the majority of producers involved and the of variety of products involved, such request was rejected. The item subject to re-examination was the same as in the original inquiry, i.e. bed linen. The Commission's finding regarding 'product concerned' and 'like product' was the same as in the original investigation.<sup>146</sup>

### **3.7.1 NORMAL VALUE**

As per Article 2 of the primary regulation, since the local sales volume of sole manufacturers out of the sampled manufacturers surpassed 5% of its aggregate export sales volume to the Union, thus the local sales of the like item were thought to be representative for this trader. As the domestic sales volume of other seven companies in the sample was less than 5% of export volume under the meaning of Article 2 (2), therefore it was settled that these sales were insignificant and might not be considered as representative.<sup>147</sup>

Ordinary course of trade test was conducted by the Commission on domestic sales transactions of the product concerned in Pakistani markets. For those item types where the expense of manufacture was equivalent to or over the weighted average price of that type, paying little heed to whether these sales were beneficial or not, normal value was constructed on the basis of weighted average of actual price paid by Pakistani consumers in domestic market. However, normal value was constructed in accordance of Article 2(3) of the basic regulation where weighted average price of product was found to be less than manufacturing cost. These

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<sup>145</sup> Commission Notice of initiation of a partial interim review of the anti-dumping measures applicable to imports of cotton-type bed linen originating in Pakistan [2004] C 196/02

<sup>146</sup> Council Regulation (EC) No 695/2006 of 5 May 2006 amending Regulation (EC) No 397/2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan [2006] OJ L 121/14, Para 13

<sup>147</sup> Ibid, Para 24

criteria were used to assess the representativeness of domestic sale and its sale within ordinary course of trade.<sup>148</sup>

As per Article 2(6),<sup>149</sup> normal value was developed by including an adequate sum for (SG&A) costs and for profit to the manufacturing expenses of the exported types. The Union industry asserting, that only beneficial transactions ought to have been utilised to conclude the rate of profit earned by the trader in the normal course of business, challenged the approach adopted by the Commission. This assertion was overruled, since it could not be concluded unfailingly if a specific transaction was moneymaking or not. Furthermore, it was recognised that generally the export transactions stood in the normal course of business.<sup>150</sup>

Since none of the other seven sampled exporters had representative domestic sales, normal values for them must be constructed as per Article 2(3).<sup>151</sup> For every one of these manufacturers, accordingly, normal value was developed by including an adequate sum for SG&A costs and for profits to the expense of assembling of every type exported to the Union, balanced where pertinent. As per Article 2(6) (c),<sup>152</sup> the selling, general and administrative expenses and profits were likewise decided, on the premise of local sales of the two traders with local sales constituting 2.2 and 0.2% separately and the weighted average of the SG&A costs sustained and profit taken by the sole trader with representative sale.<sup>153</sup>

The trader further contended that the SG&A and profit utilised for developing NV is taken from a trader with an alternate structure, ostensibly equivalent with a retail chain. It included that regardless of the possibility that Article 2(6) (c) of the fundamental regulation is applied, at any rate the SG&A and the benefit of the exporter itself ought to be utilised. It ought to be noticed that the applicant manufacturer's sales are genuinely little in volume and contain items which do not

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<sup>148</sup> Ibid, Para 27

<sup>149</sup> Council Regulation (EC) No 384/96, art 2(3)

<sup>150</sup> Above (n 146) Para 29

<sup>151</sup> Council Regulation (EC) No 384/96, art 2(3)

<sup>152</sup> Ibid

<sup>153</sup> Above (n 146) Para 32-33

even fit in with the same general class of items. Thus, it is not pragmatic to utilise SG&A and profit figured on such improper data.<sup>154</sup>

### **3.7.2 EXPORT PRICE**

Seven manufacturing traders made their export sale directly to the independent customers. Therefore, export price for them was established on the premise of actual cost paid by those independent consumers on the Union markets, as required by Article 2(8) of the basic regulation. The eighth examined manufacturer had a related merchant in the Union. In this manner, according to Article 2(9) of the fundamental regulation the costs for these fares were ascertained on the premise of the costs at which the foreign items were first resold to an autonomous purchaser.<sup>155</sup>

### **3.7.3 COMPARISON**

As per Article 2(10) due recompense as adjustments was allowed for dissimilarities influencing value and value comparability with a specific end goal to guarantee a reasonable comparison among normal value and export price. One Pakistani exporter the adjustments granted for commissions paid alleging that the related manufacturer was carrying out business within the capacity of an agent did not really carry on business of its own and was, in actuality, its very own minor extension of a trade office. However it was concluded that the related manufacturer was positively doing its own independent business exercises, for example the managing and acquiring of a portion of the quota, the adjustment was therefore confirmed and the claim rejected. The Commission asserted that such sales activities might not be carried out by the trader itself, and was sustaining considerable expenses in doing so.<sup>156</sup>

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<sup>154</sup> Ibid, Para 33

<sup>155</sup> Ibid, Para 45-48

<sup>156</sup> Ibid, Para 49-55



### 3.7.4 DUMPING MARGIN

Accordance to Article 2(11),<sup>157</sup> individual dumping margin (for the sampled trading makers) was set up on the premise of correlation of a weighted normal EP with a weighted average normal value. It varied from company to company as follows: Al-Abid Silk Mills Ltd, Karachi 3.9%, Gul Ahmed Textile Mills Ltd, Karachi 5.6%, Fairdeal Textiles (Pvt) Ltd, Karachi 1.3% Mohammad Farooq Textile Mills Ltd, Karachi 3.5%, Yunus Textile Mills, Karachi 8.5%, Nishat Mills Limited, Faisalabad 6.1%, Lucky Textile Mills, Karachi 7.2%, Chenab Limited, Faisalabad 5.7%.<sup>158</sup>

According to Article 9(6), the dumping margin (for the collaborating manufacturers not chosen in the sample) was established on the premise of the weighted normal dumping margin of the traders chosen in the sample. This weighted normal dumping margin was computed at the rate of 5.8% of export price at the Union market.<sup>159</sup>

### 3.7.5 ANALYSIS

Under the meaning of Article 2(2) of the basic regulation, a domestic sale representing at least 5% of the export of like product can be used to calculate the normal value, however it is also provided by the same provision and by judgement in Case T-304/11<sup>160</sup> that domestic sale of the like product representing even less than 5% of the export can be used to calculate normal value if that sale is in the ordinary course of trade. Despite their low volume, their sale can be in ordinary course of trade. Andersen refers to one case in *Farmed Atlantic Norway* where national statistics showed that total national volume of domestic sale was 5.2% of export sale, and the Council accepted less than 5% domestic sale of two exporters.<sup>161</sup>

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<sup>157</sup> Council Regulation (EC) No 384/96

<sup>158</sup> Above (n 146) Para 57

<sup>159</sup> Ibid, Para 60

<sup>160</sup> Case T 304/11, *Alumina d.o.o. v Council of the European Union* {2013} OJ C 226, Para 27-30

<sup>161</sup> Henrik Andersen, *EU Dumping Determinations and WTO Law* (Kluwer law International 2009) 138

However, in this investigation, as the domestic sale of seven Pakistani exporters was representing less than 5% of their export, therefore the Commission preferred to construct normal value by adding SG&A costs instead of relying on normal value reported by the exporters.

However, use of domestic sale representing less than 5% of export sale is pure discretion of the Commission within the meaning of article 2(2), and judgements of the EU Courts in cases. Therefore, use of domestic sale representing less than 5% of export sale cannot be claimed as a matter of right by Pakistani exporters. It is established in Case C-105/90<sup>162</sup> that normal value may be constructed by adding profit margin and SG&A costs only where there is no sale of the like product in the ordinary course of trade, or where such sale is insufficient or do not permit an appropriate comparison. Also sale cannot be considered within ordinary course of business if prices are artificially low, if there is barter trade and when there are non-commercial processing arrangements.<sup>163</sup>

As far as the definition of ‘Same general Category’ is concerned, neither the basic regulation nor the WTO Agreement provides precise criteria in this regard. Instead it seems that the WTO intended to render discretion to investigative agencies and they can define it depending on the varying circumstances of each case. Not only in this case, but in many other ways too, EU laws specifically and the WTO Agreement generally have imparted vast discretion to investigating bodies due to the very complex commercial, economic and technical issues involved.

The Judicature, however, restrained its jurisdiction to evaluate whether institutions have acted according to the relevant provision of basic regulation.<sup>164</sup> However, it is contended that the deficiency of precise definition of the same

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<sup>162</sup> Case C-105/90, *Goldstar Co. Ltd v Council of the European Communities* [1992] ECR I-00677, Para 13

<sup>163</sup> Case T 84/07, *EuroChem Mineral and Chemical Company OAO (EuroChem MCC) v Council of the European Union* [2013] OJ C 117, Para 46

<sup>164</sup> Case T 633/11, *Guangdong Kito Ceramics Co. Ltd v Council of the European Union* [2014] OJ C 32

general category renders significant opportunity for the investigative bodies to manoeuvre the course of calculation of normal value.

The critical examination of this investigation as done by the EU Commission revealed that in this review investigation, the size of sample of exporters curtailed having share of only 31% out of the total textile industry of Pakistan, however, in the original investigation the sample was representing 35% of Pakistan's total production of bed linen. Hence, in the same way as it was argued in the original investigation, it is to contend that the sample size in the review investigation was also small, insufficiently constituting Pakistan's textile industry.

Although Article 17(1) does not provide for any precise representation threshold, however it demands that a sample should be statistically valid or representing the majority of production from the country under investigation. However, according to the researcher's understanding, a sample constituting at least 50% of domestic industry of product concerned may be considered as statistically valid and constituting majority of production.

Article 11(9) and Cases T-169/12<sup>165</sup> and Case T-143/06<sup>166</sup> provide that if no significant change of circumstances occurred, in review investigation, the Commission is responsible to apply the same methodology as applied in the original investigation. However, the investigative institutions have wide discretion in this regard to decide that, if significant change of circumstances has occurred or not? Where the institutions conclude that no significant change of circumstances occurred Article 11(9) will not apply.<sup>167</sup>

But in the current investigation, the provision of accurate information regarding profit margin and cost of production, and later verification of this information by the Commission, proves to be significant change of circumstances. Therefore, the EU Commission can duly use the different methodology in review investigation.

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<sup>165</sup> Case T 169/12, *Chelyabinsk electrometallurgical integrated plant OAO (CHEMK), Kuznechie ferrosplavy OAO (KF) v Council of the European Union*, [2015] OJ C 165, Para 90-94

<sup>166</sup> Case T-143/06, *MTZ Polyfilms Ltd v Council of the European Union* [2009] ECR II-04133, Para 41-51

<sup>167</sup> Case T-143/06, *MTZ Polyfilms v Council of the European union* [2009] ECR-II-04133, Para 34

However, under the proposal for the Modernisation of the EU Trade Defence Instrument, adapting the trade defence instrument according to the current needs of the European economy, it proposes the deletion of Article 11(9) of the basic regulation.<sup>168</sup>

Furthermore, it is noted that unlike the original investigation, the review investigation validly calculated individual dumping margin for all eight sampled exporters. Therefore, it could be established that the manifest error of assessment as committed by the EU Commission in the original investigation is duly rectified by the Commission itself in the review investigation. The calculation of dumping margin in the review investigation revealed that the average dumping margin calculated in the original investigation was significantly high, thus was insufficiently representing the actual level of injury caused by dumped imports from Pakistan.

Vermulst noted that the EU Commission used to have recourse to two methods of calculation of injury margin: the price undercutting method and the price underselling method. Under the price undercutting method, the Commission compares prices of foreign exporters and local manufacturers at the EU market. The difference between them is the margin of price undercutting. Under the price underselling method, the Commission evaluates the pressure of foreign dumped imports on local industry to keep their prices low. For the price underselling method, the Commission makes use of constructed price (by adding manufacturing cost and reasonable profit) instead of relying on the actual market price of Union producers.<sup>169</sup>

It is found that the calculation of a precise, relatively lower, individual dumping margin can possibly be calculated due to complete verification visits (as this time they were held in a third country), and unlike the original investigation, a good level of cooperation was rendered by the exporters. It could also be established that the erroneous calculation of average dumping margin at the rate of 13.1% in

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<sup>168</sup> COM (2013) 191 final; Case C-374/12 *Valimar OOD v Nachalnik na Mitnitsa Varna* [2014] Opinion of AG Cruz Villalon

<sup>169</sup> Above (n 134) 105, 111

the original investigation due to the poor cooperation by the sampled exporters and passive approach by the EU Commission to base its conclusion on precise information, tends to unduly prejudice many other cooperating producers which were not part of the sample, as they had to pay AD duty at the rate of 13.1% whereas the actual dumping margin was 5.8%.

Another positive aspect of this investigation is that, unlike the practice of zeroing as applied by the Commission in previous investigation (Council Regulation (EC) 1069/97) regarding alleged dumped imports of same product from Pakistan, in this case the EU Commission rejected the Community manufacturers' demand to consider only profitable domestic transactions for the purpose of calculation of dumping margin.

Thereafter, as the maximum time period of definitive AD Duty is up to five years, in this case the five years' limit expired in 2009. Therefore, AD duty was declared to be expired through notice C 52 of 2009, as no expiry review was launched. Thus definitive measure expires with effect from March 2009.<sup>170</sup>

### **3.8 CONCLUSION**

The current chapter is linked with the previous and next chapter, as all these three chapters have attempted to establish the consistency and/or inconsistency of the EU institutions; in their application of basic regulation (research question no 1). In this chapter, the provisional, definitive and partial interim review of ADDs levied on cotton-type bed linen originating from Pakistan, has been examined. The findings and calculations (of the Commission and the Council) about normal value, export price, dumping margin and like product etc., have been analysed within the context of relevant case laws, basic regulation and the WTO agreement.

This examination, however led to a conclusion that, on multiple occasions, the EU institutions were not adopting a consistent approach in their findings and interpretation of the basic regulation.

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<sup>170</sup> CommissExtraion Notice of the expiry of certain anti-dumping measures [2009] C 52/08

The next chapter, examines, the consistency of the EU institutions in their application of the basic regulation about AD investigations related to dumped imports of unbleached cotton fabric originating from Pakistan.

## **CHAPTER FOUR: ANTI-DUMPING DUTIES IMPOSED ON UNBLEACHED COTTON FABRICS: CRITICAL REVIEW OF THE EU COMMISSION'S INVESTIGATIONS AND THE JUDGEMENTS OF THE EU COURTS**

### **4.1 INTRODUCTION**

Along with the preceding two chapters, this chapter predominantly attempts to examine the Commission's investigations which led to the imposition of safeguard measures on all other textile products except cotton-type bed linen, thus it is also linked with the first and primary research question of this study. Along with the Commission's provisional measures and the Council's definitive duties, the current chapter also attempts to explore the judgements of Courts whereby either of the parties challenged the institution's findings in the EU Courts. Thus, it tends to cover all possible aspects of anti-dumping (AD) duty imposed on products originating from Pakistan, starting from the initiation of complaint up to the final judgement of the EU Court of Justice.

### **4.2 IMPOSITION OF PROVISIONAL AD DUTY ON UNBLEACHED COTTON FABRICS THROUGH COMMISSION REGULATION (EC) No 2208/96**

The investigation was started following an application filed on behalf of the Union industry on 8 January 1996, by Eurocoton<sup>1</sup>. The complaint was supported by 21 Union manufacturers, representative of major percentage of Union manufacture of the like product. The complaint contained significant evidence of

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<sup>1</sup> The Cotton and Allied Textile Industries of the EC

material injury and dumping of the said product, providing sufficient justification for the initiation of investigation.<sup>2</sup>

#### **4.2.1 PRODUCT UNDER INVESTIGATION AND LIKE PRODUCT**

The product in question is produced in many different types or constructions. Constructions are defined by a combination of the following elements: the count (or weight) of the yarn used, the number of threads, and the way the yarns are interlaced. Domestic and export types of the product from the countries concerned were thought to be like products pursuant to Article 1 (4) of regulation (EC) No 384/96, as there were no distinctions in the essential attributes of the diverse sorts and characteristics of grey cotton fabrics.<sup>3</sup>

#### **4.2.2 NORMAL VALUE**

It was found that only two exporters in the sample had representative local sales of the concerned product through the inquiry period. In the case of the first company, sales on the domestic market were representative and profitable. However, there was only one type sold domestically which was comparable to the exported type. Sales of this type, however, could not be considered representative. The other exporter had representative local sales of the product concerned, but those sales were all loss-making, and therefore might not be considered as being made in the normal course of trade. In those circumstances, the Commission had to construct normal value in all cases.<sup>4</sup>

For the first trader, constructed NV was determined according to Article 2(6) by addition to the manufacturing cost of the exported models, the exporter's own

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<sup>2</sup> Commission Notice of initiation of anti-dumping proceedings concerning imports of unbleached cotton fabrics originating in the People's Republic of China, Egypt, India, Indonesia, Pakistan and Turkey [1996] OJ C 50/03

<sup>3</sup> Commission Regulation (EC) No 2208/96 imposing a provisional anti-dumping duty on imports of unbleached (grey) cotton fabrics originating in the People's Republic of China, Egypt, India, Indonesia, Pakistan and Turkey [1996] OJ L 295/3, Para 11-13

<sup>4</sup> Ibid, Para 43



local SG&A<sup>5</sup> expenses and domestic profit margin earned on local sales of the concerned product.<sup>6</sup>

For the other exporter, NV was constructed by addition of the production costs of the exported models, the exporters' own SG&A expenses and the domestic profit margin of the producer which had profitable domestic sales. The other two exporters in the sample did not have local sales. Therefore, normal value for those traders was built by totalling to the engineering costs of their exported models the weighted average of the local SG&A expenses determined for the two exporters with domestic sales and the domestic profit margin determined for the exporter which had profitable domestic sales.<sup>7</sup>

### **4.2.3 EXPORT PRICE**

In all those cases where sale of bleached cotton fabric was made to the independent customers, export price was established based upon the actual cost paid by those independent European consumers, pursuant to Article 2 (8)<sup>8</sup> of the basic regulation. However, in those cases where export sales were made to the associated importers, export price was established on the basis of cost paid by the independent customers when the product concerned was for the first time resold in the Union market.<sup>9</sup>

### **4.2.4 COMPARISON**

As per Article 2 (10) of the basic regulation, due stipend as adjustment was made for differences influencing comparison, keeping in mind the end goal to guarantee a reasonable comparison amongst the normal value and export price. Conformities were allowed in all situations when a claim was made within

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<sup>5</sup> Selling, General and Administrative Costs

<sup>6</sup> Above (n 3) Para 43

<sup>7</sup> Ibid, Para 43

<sup>8</sup> Council Regulation (EC) No. 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1996] OJ L 056, art 2(8)

<sup>9</sup> Above (n 3) Para 49-53

prescribed time limits set for that reason, and when the concerned party could exhibit the impact of any claimed difference on price comparability.<sup>10</sup>

A request for a recompense for import charges, as per (2)(10)(b), was rejected as immaterial considering that the duty was excluded in the expenses of raw material utilized for the computation of constructed normal value (NV).<sup>11</sup>

#### **4.2.5 DUMPING MARGIN AND INJURY**

The Commission found that a comparison among an average export price and an average of the normal value of all the trades to the Union did not replicate the complete grade of dumping being experienced. It also found design of export prices which differed considerably between diverse consumers, time periods or regions. Therefore according to Article 2 (11),<sup>12</sup> export prices were to be compared on a transaction-to-transaction basis to weighted average NV. In order to determine injury, Commission examined all relevant facts including Union consumption, volume and fair portion of the dumped imports, state of the Community industry and bills of the dumped imports.<sup>13</sup>

Similarly, in order to establish the causal link, Commission examined all possible causes in this regard including effect of dumped imports from countries concerned, influence of other factors (imports from third countries and increase in raw cotton prices). Therefore provisional AD duty was imposed on Pakistani unbleached cotton fabric ranging from 17.0% to 30.6% differed from company to company, which were part of the sample.<sup>14</sup>

#### **4.2.6 LAPSE OF MEASURES**

Within six months' time limit of the provisional measures, the Commission sent recommendation to the EU Council for adoption of definitive AD measures in this regard. But the 15-months deadline for the imposition of definitive AD duties was

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<sup>10</sup> Above (n 3) Para 54

<sup>11</sup> Ibid, Para 63

<sup>12</sup> Council Regulation (EC) No. 384/96, art 2(11)

<sup>13</sup> Above (n 3) Para 65

<sup>14</sup> Ibid, art 1

lapsed but definitive *ad valorem* measures could not be adopted because the Council could not attain simple majority in favour of such measures. However, Eurocoton challenged (in the General Court) the failure of the Council to adopt definitive AD measures according to the proposal of the Commission.<sup>15</sup>

#### 4.2.7 ANALYSIS

The EU investigative institutions have frequently used the asymmetrical method for comparison of constructed normal value and export price. Where the institutions used to make adjustments for rebates and indirect taxes to constructed normal value, they omitted to make similar justified adjustments to the export price. Where the institutions have avoided recourse to the symmetrical method without due cause, it has affected fair comparability between NV and EP. Waer *et al.* noted that this asymmetry method has led to calculation of artificial dumping margins (DM) with 10-20% higher rates.<sup>16</sup> However, in 1995 this practice was adjudicated to be inconsistent with the GATT AD Agreement by a WTO Panel report in the audio tapes in cassettes case.<sup>17</sup> Although in the current investigation, apparently, the asymmetrical method is not found to be practiced.

It is found that the Commission Regulation (EC) 2208/96 does not precisely state the Union representative threshold of the 21 Union producers supporting the initiation of investigation. Under Article 5(4) of the basic regulation, an investigation cannot be initiated unless it is supported by Union producers representing 25% of total production, similarly an investigation cannot continue unless it is established that it is being supported by Community industry (it will be considered to be supported by Community industry if Union producers representing 50% of total production of product concerned in the Union support such investigation).

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<sup>15</sup> Above (n 3)

<sup>16</sup> Paul Waer and Edwin Vermulst, 'The GATT Panel Report on the EC Anti-Dumping Proceeding Concerning Audio Tapes in Cassettes: Back to Basics in the Concept of Dumping?' (1995) 29 (6) Journal of World Trade 31, 41

<sup>17</sup> ADP/136, Panel Report, EC-Anti-Dumping Duties On Audio Tapes in Cassettes Originating in Japan, Adopted on 28<sup>th</sup> April 1995  
<<http://www.worldtradelaw.net/document.php?id=reports/gattpanels/audiocassettes.pdf>> accessed on 1<sup>st</sup> September 2016

The Commission was, however, expected to state the precise representative threshold of Union industry. It is duly established by the EU Courts in Case T-167/07<sup>18</sup> and Case T-107/08<sup>19</sup> that institutions should state adequate reasons for their findings and conclusions as, it provides an opportunity to interested parties to challenge their findings in the EU Courts. It would be unreasonable to require a detailed description of each fact underpinning the contested measures and other technical information. However, it should be sufficient enough to render an opportunity for all interested parties to understand the reasoning of outcome and ground on which decision is based.<sup>20</sup>

Similarly, it is also not clearly stated whether the product concerned was placed in the same homogeneous group or divided in different types, as it differs on the basis of count (or weight) of the yarn used, the number of threads for both warp and weft, and the way the yarns are interlaced. It is also difficult to decide for an outsider if the product concerned and like product sold in the domestic market were comparable, as, the Commission established their comparability on the basis of having similar characteristics. Due to the non-availability of any consistent scale to judge the resembling characteristics, this is however the area where the Commission enjoys wide discretion to decide according to the circumstances of each case, thus sometimes it may tend to change the outcome of the investigation. As acknowledged by Merit Janow in the EC bed linen case, sometimes the investigative authorities define like product so narrowly that it becomes impossible for foreign exporters to escape from it.<sup>21</sup>

The scope and definition of ‘like product’ can be narrow or wide, depending upon the Union industry’s interest. There are a number of cases where the Commission

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<sup>18</sup> Case T-167/07, *Far Eastern New Century v Council of the European Union* [2011] ECR II-00094, Para 103

<sup>19</sup> Case T-107/08, *Transnational Company ‘Kazchrome’ AO and ENRC Marketing AG v Council of the European Union and European Commission* [2011] ECR II-08051, Para 31

<sup>20</sup> Case C-413/06, *Bertelsmann and Sony Corporation of America v Impala* [2008] ECR I-4951, Para 180

<sup>21</sup> Merit Janow and Robert Staiger, ‘EC – Bed Linen: European Communities – Anti-Dumping Duties on Imports of Cotton-Type Bed Linen from India’ in Henrik Horn and Petros Mavroidis (eds), *The WTO Case Law of 2001: The American Law Institute Reporters’ Studies* (Cambridge University Press 2003) 115, 135

proved that it has unlimited discretionary powers in terms of deciding about like product. A broad interpretation of 'like product' excluding market-based factors leads to a state where ADD is applied on products which were not even dumped, or were dumped at lower levels. The basic regulation lacks transparent and concise criteria for determining like product. Due to this gap, the Commission enjoys a wide discretion about determining the scope of like product.<sup>22</sup>

The Commission's interpretation of like product is mostly found to be focused on physical and technical characteristics. However, it does not pay heed to the competition and substitute ability of the product. It is crucial that only directly related and identical products should be compared, otherwise it will tend to calculate an artificial injury margin and arbitrary protective measures.<sup>23</sup>

In the current investigation, Union importers argued that gauze should be excluded from the scope of the investigation, as it was not being produced by Union industry. But according to the EU institutions' practice, this is not a sufficient reason for exclusion of certain products from the scope of the investigation, as non-production or low production of a product within the EU may have a connection with alleged dumped imports. However, if it is not the case, then ADD should not be placed, as Union industry cannot be injured if it does not have local production of a certain product.<sup>24</sup>

Van Bael and Bellis established that EU institutions use same criteria (based on physical and technical characteristics) for their decisions about 'like product' and 'product concerned'. However, the practice of institutions signifies that the criteria used for the definition of 'like product' are less sophisticated and comprehensive than those used for 'product concerned'. Once the EU institutions determine the 'product concerned', they invariably determine that a particular

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<sup>22</sup> Arturas Mickus, 'Shortcomings of EU Anti-Dumping Law and Policy' (2002) 4 (4) European Journal of Law Reform 525, 538

<sup>23</sup> Marco Broncken and Natalie McNelis, 'Rethinking the "Like Product" Definition in WTO Antidumping Law' (1999) 33 (3) Journal of World Trade 73, 78

<sup>24</sup> Van Bael and Ballis, *EU Anti-Dumping and other Trade Defence Instruments* (5th Edition, Kluwer Law International 2011) 220

product is like product of ‘product concerned’ being manufactured in Union industry.<sup>25</sup>

Out of four exporters, only one exporter’s sale at domestic market was found to be in the ordinary course of trade and representative (5%) of export sale. However, the Commission did not calculate its NV according to Article 2(1) on the basis of actual price paid at the domestic market, as the Commission found that only one type of the concerned product was being sold on the local market, sale of this type however could not be considered as representative. Andersen contends that division of product concerned into different types in order to carry out the 5% ordinary course of trade test is in violation of Art 2.2 of the WTO law, as such division of product concerned is allowed only within particular aspects of the investigation, e.g. comparison of EP and NV.<sup>26</sup>

However, while constructing the normal value, not only for this company but also for three other companies (whose domestic sale was found to be insufficient), according to Article 2(4) the Commission used the profit margin incurred on that particular type of the product concerned to construct the normal value of the whole homogeneous group of product concerned (which includes other types of the product as well having different profitability).

Although the basic AD regulation does not provide for calculation of normal value where sale of only one type of product concerned is found to be representative, this thesis, however, contends that in accordance with Article 2(4) the Commission calculated the NV for all exporters on the basis of the same criteria (profit margin incurred on one type of product concerned sold by one trader), which was rejected (as it was considered non-representative) by it to calculate normal value on the basis of actual price paid on domestic market.

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<sup>25</sup> Ibid

<sup>26</sup> Henrik Andersen, *EU Dumping Determinations and WTO Law* (Kluwer law International 2009) 136

However, it was ruled by the EU Court in Case T-159/94<sup>27</sup> that for the calculation of NV of the product concerned the institutions should construct normal value by adding SG&A costs and reasonable profit margin only if it could not be assessed on the basis of actual price paid on the domestic market. The method of construction of the normal value offered extensive debate about its efficacy and originality. Wenxi argued that alternative ways of construction of the normal value tend to create artificial and somewhat higher domestic prices of the like product as compared to the original price actually paid by consumers on the domestic market.<sup>28</sup>

Lastly, it is also established that in this investigation both the EU Commission and the Council interpreted or determined the Community interest differently, as the proposal of the EU Commission to levy definitive duty with the average rate of 32% of export price could not be adopted in the Council due to lack of a majority vote. Moreover, the big Union industries producing iron, textiles etc. were found to be more associated and united as compared to Union importers and consumers. Therefore, comparatively they are in a better position to safeguard their interest by using their influence, while the consumer's interest is better protected by the Council as compared to the Commission.<sup>29</sup> However, Katalin *et al.* advocates for the establishment of an association of consumers safeguarding their right to secure their interests and to file a complaint individually or in the form of association.<sup>30</sup>

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<sup>27</sup> Joined Cases T-159/94 and T-160/94, *Ajinomoto Co., Inc. and The NutraSweet Company v Council of the European Union* [1997] ECR II-2465, Para 127

<sup>28</sup> Li Wenxi, *Anti-Dumping Law of WTO/GATT and EC: Gradual Evolution of Anti-Dumping Law in Global Economic Integration* (PhD Thesis, Lund University 2001) 62

<sup>29</sup> Dirk De Bièvre, 'Interest Groups and EU Anti-Dumping Policy' (2011) 18(3) *Journal of European Public Policy* 339, 351; Edwin Vermulst, 'The 10 Major Problems with the Anti-Dumping Instrument in the European Community' (2005) 39(1) *Journal of World Trade* 105, 112

<sup>30</sup> Katalin Cseres and Joana Mendes, 'Consumer's Access to EU Competition Law Procedures: Outer and Inner Limits' (2014) 51(2) *Common Market Law Review* 483, 499

### **4.3 CASE ANALYSIS OF CASE T-213/97**

#### **4.3.1 BRIEF FACTS OF THE CASE**

A definitive AD duty must be imposed within 15-months' deadline from initiation of the proceedings, but in this case the deadline expired on 21 May 1997. Therefore, no definitive AD duty could be imposed due to the lack of a simple majority in the Council. Thus the applicants, Eurocoton and some other European companies, challenged the Council's decision in the General Court and requested to Court to declare void the Council's resolution to discard the Commission's proposal for a regulation; first, collecting the provisional duty imposed by regulation No 2208/96, and second, levying a definitive AD measure on imports of unbleached cotton fabric originating from India, Egypt, China, Turkey, Indonesia and Pakistan.<sup>31</sup> However, the Council argues that the Court should terminate the application as it is groundless and irrelevant.<sup>32</sup>

#### **4.3.2 ARGUMENTS OF THE PARTIES**

##### **4.3.2.1 ARGUMENTS OF THE COUNCIL**

The Council submits that the provisional duties ceased to be applicable purely due to the expiration of the set period of six months from the date of the enforcement of the regulation, thus the conclusion of the written procedure did not constitute elimination of the provisional AD duties levied. It argues that the conclusion of the voting process of 16 May 1997 does not constitute a reviewable act within the domain of Article 173<sup>33</sup> of the Treaty.<sup>34</sup>

According to the Council, the applicants' petition on the ground that no reasons were given for the decision is in fact unfounded, as it is clearly impossible for the Council to offer such reasons, and the reasons why individual member states vote against a proposal may be quite diverse. Second, in the alternate, the Council

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<sup>31</sup> Commission Regulation (EC) 2208/96

<sup>32</sup> Case T-213/97, *Committee of the Cotton and Allied Textile Industries of the European Union (Eurocoton) v Council of the European Union* [2000] ECR II-03727, Para 5

<sup>33</sup> Article 173 of the treaty establishing the European Community [2002] OJ C 325, now Article 263 of the Treaty on the Functioning of the European Union

<sup>34</sup> Above (n 32) Para 25



contends that the proposal might still have been approved by the Council under the conditions laid down by the Council's Rules of Procedure, and Article 2(5)<sup>35</sup> thereof, as the negative conclusion of the written procedure does not constitute a decision conclusively rejecting the Commission's proposal. The Council added that efforts were in fact made by the delegation of France to have the proposal debated again and approved, but they failed, as the conditions laid down by the Rules of Procedure were not fulfilled.<sup>36</sup>

#### **4.3.2.2 APPLICANT'S ARGUMENTS**

The applicant claims that the legal position of the applicants was unquestionably impaired by the failure of the Council to approve the definitive anti-dumping duty (ADD) proposed by the Commission. It further adds that complainants who initiate an AD investigation would be deprived of any judicial remedy where the Council fails to act, thus it would be conflicting both to wide-ranging principles of law and to the objective of the basic regulation.<sup>37</sup>

The claimant further submits that where proceedings are terminated as a result of the expiry of the 15-month period, a particular remedy is essential. It follows that even if, as the Council proclaims, it could have implemented the Commission's proposal after 16 May 1997, the fact is that it permitted the time-limit of 15 months to perish and that amounts to a negative act endorsing its refutation of the Commission's proposal. Negative acts, such as those at issue in the present case could not be excluded from judicial review on the basis of the mere fact that it is difficult for the Council to give reasons for its decision.<sup>38</sup>

#### **4.3.3 FINDINGS OF THE COURT**

The General Court established that, the Council of the European Union is under no obligation to necessarily act upon and adopt the proposed measures by the

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<sup>35</sup> Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1996] OJ L 055, art 2(5)

<sup>36</sup> Above (n 32) Para 29

<sup>37</sup> Ibid, Para 32-33

<sup>38</sup> Ibid, Para 33-36

Commission, as it can decide conversely based upon the majority vote. It follows both from the scheme of the Treaty on the Functioning of the European Union.<sup>39</sup>

Where the Council cannot act upon the Proposal of the Commission due to lack of simple majority favouring the adoption of Commission's proposal, in such cases the Council's failure to act cannot be considered as a reviewable act by the court. First, within the meaning of Article 173<sup>40</sup> of the Treaty (now, after amendment, Article 263 TFEU) the mere statement that a simple majority could not be achieved as mandatory for the adoption of a proposal for an AD regulation is not in itself a reviewable act. Secondly, the Council has not adopted any measures yet which could be actionable before the court.<sup>41</sup>

#### **4.3.4 COMMENT**

The Council of the European Union being representative of the latter is expected to act in the largest interest of the whole Union; having said that, every member country through its specified votes can try to act in its own national interest. Therefore, all actions within the sphere of competition law are taken by simple majority. As the successful adoption of the Commission's proposal through simple majority cannot be called into question in the same way, if the Council cannot uphold the Commission's proposal due to the lack of a simple majority in the Council, it should not be challenged either. Nordström noted that the member states via the Council cannot be deprived of their right to criticise or call in question the findings made and conclusions drawn by the Commission about injury margin or Community interest etc.<sup>42</sup>

With reference to the applicant's argument that they will not have any legal protection if current plea is considered to be inadmissible; it could be argued that

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<sup>39</sup> Above (n 35) Para 88

<sup>40</sup> Article 173 of the treaty establishing the European community [2002] OJ C 325, now Article 263 TFEU

<sup>41</sup> Above (n 32) Para 59-61

<sup>42</sup> Håkan Nordström, 'On the Political Economy of EU Anti-Dumping Policy: Decoding Member States Votes' (2011) National Board of Trade, Sweden Discussion Paper 12  
<[https://www.wto.org/english/res\\_e/reser\\_e/gtdw\\_e/wkshop11\\_e/nordstrom\\_e.pdf](https://www.wto.org/english/res_e/reser_e/gtdw_e/wkshop11_e/nordstrom_e.pdf)> accessed 10 January 2015

the review by the Court sought by the interested parties must align with the nature of powers reserved by the EU institutions as regards AD measures, as it was duly established in case *Fediol v Commission*.<sup>43</sup> Moreover, a legal protection can only be given if one's legal right is infringed through any wrongful act of the institution. However, such legal protection cannot be extended up to the valid actions and due jurisdictions of the institutions.

As far as the applicant's argument that the Council does not properly state the reasons for its decision is concerned, it could be stated that the Council's statement that measures could not be adopted due to the fact that countries opposing these measures are in a majority and the countries supporting it are in a minority should be considered sufficient. There is no further need of any specific statement of reason.

Moreover, it should be noted that it is the EU Commission which is under obligation to state reasons for all of its decision, as it enjoys wide discretion due to the complex economic consideration in AD cases. However, the same is not required in case of the Council, as voting in the Council speaks by itself for the Council's decision and actions or refusal to act. In case *Air France v Commission*<sup>44</sup> it was established that the outcome of the voting procedure does not constitute a reviewable act. Whether the statement in issue establishes an act against which an action for annulment may be carried, it is essential to inspect the degree to which the statement yields legal impact.

## **4.4 APPEAL IN FRONT OF EU COURT OF JUSTICE CASE C-76/01**

### **4.4.1 JUDGEMENT**

The EU Court of Justice established that the expiration of the 15-month period prescribed in Article 6(a) of the basic regulation, together with the failure to

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<sup>43</sup> Case 191/82, *Fediol v Commission of the European Communities* [1983] ECR 2913, Para 29

<sup>44</sup> Case T-3/93, *Air France v Commission of the European Communities* [1994] ECR II-121, Para 44

accept the proposal for a regulation levying a definitive ADD submitted by the Commission, which established conclusively the Council's locus in the concluding stage of the AD proceedings, possesses all the features of a reviewable act inside the sense of Article 173 of the Treaty now Article 263 TFEU.<sup>45</sup>

The Court further added that AD proceedings are comparable in numerous ways to an administrative practice. In these cases, the Council acts within the rules of the basic regulation which give procedural protections to the economic operatives concerned and to their professional connotations, and set well-defined parameters to the commands of the institutions.<sup>46</sup>

It follows that decisions of the Commission or the Council to close AD investigation without imposing AD duties, as well as regulations levying definitive AD duties adopted at the end of AD proceedings, could be the subject of actions before the Union Courts. The Council must deliver an acceptable statement of reasons where it chooses not to embrace a proposition for a regulation levying definitive AD duties. And this statement of reasons must show evidently and unequivocally why, within the meaning of the provisions of the basic regulation, there is no necessity to approve the proposal.<sup>47</sup>

Where the facts as finally settled demonstrate that the Union interest calls for mediation as per Article 21, or that there is dumping and harm brought about along these lines, consistency with the obligation to state reasons involves the demonstration by which the Council chooses not to acknowledge a proposition for a regulation demanding conclusive duty to indicate that the Union interest does not call for intervention on its part, or that the supposed dumping is not causing material injury to the EU market.<sup>48</sup>

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<sup>45</sup> Case C-76/01, *Eurocoton v Council of the European Union* [2003] ECR I-10091, Para 67

<sup>46</sup> *Ibid*, Para 69-71

<sup>47</sup> *Ibid*, Para 88-89

<sup>48</sup> *Ibid*, Para 90-92

#### 4.4.2 COMMENT

It may be stated that Council of the EU as a legislator has altogether different functions, procedures and powers; therefore it should not be confused with the EU Commission, which being an investigative body is responsible to state adequate reasons for its decisions. Moreover, in the cases which gave rise to the judgements in *Fediol v Commission*<sup>49</sup>, *Automec v Commission*<sup>50</sup> and *Lilly Industries v Commission*<sup>51</sup>, the Commission adopted official decisions, while in this case the Council has not adopted any decision. It is the Commission which adopt regulation terminating the proceedings if it could not establish the alleged dumping or if definitive AD measures could not be approved by the Council.

As established in case Case C-121/86<sup>52</sup> that decision of the EU Commission and the EU Council not to adopt measures are as reviewable before the Judicature as their decision to adopt measures are reviewable. But it is submitted that, as a matter of fact, the above-mentioned situations are not comparable. In the case of adoption of definitive measures the aggrieved party is equally powerless to challenge the Council's adoption on grounds related to the Council's *reasons* for attaining the simple majority to support such adoption. But as a matter of fact the aggrieved party challenge the procedures of the EU Commission in carrying out its investigation, for example, the method of calculation of normal value or dumping margin.

Nordström concluded that the *Eurocoton* judgment established that the EU Council cannot reject the Commission's proposal by will. It can only do so, if it has sufficient reasons to explain its rejection in the light of the basic regulation.<sup>53</sup>

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<sup>49</sup> Above (n 43)

<sup>50</sup> Case T-24/90, *Automec v Commission* of the European Communities [1992] ECR II-2223

<sup>51</sup> Case T-120/96, *Lilly Industries v Commission* of the European Communities [1998] ECR II-2571

<sup>52</sup> Case C-121/86, *Epicheiriseon Metalleftikon Viomichanikon kai Natfiliakon and Others v Council of the European Union* [1989] ECR 3919, Para 8

<sup>53</sup> Håkan Nordström, 'On the Political Economy of EU Anti-Dumping Policy: Decoding Member States Votes' (2011) National Board of Trade, Sweden Discussion Paper 13  
<[https://www.wto.org/english/res\\_e/reser\\_e/gtdw\\_e/wkshop11\\_e/nordstrom\\_e.pdf](https://www.wto.org/english/res_e/reser_e/gtdw_e/wkshop11_e/nordstrom_e.pdf)> accessed 10 January 2015

However, this thesis contends that, the Council's decision not to approve definitive ADD is not reviewable, instead it is a legislative act based on the will of the majority of the Union. There is no need for any specific statement of reasons, as lack of simple majority in favour of the proposed measures established that the Union in majority think that implementation of definitive duty will not be in the wider interest of the Community.

Moreover, if it is accepted that non-adoption of the Commission's proposal due to lack of simple majority is reviewable, and due to such action of the Council the applicant's interest is deteriorated, the question may arise: what would be the possible outcome of such judicial review? Is it possible for the Court to declare voting process of the Council as null and void and order a second vote?

If majority of the member states within the Union announce that adoption of such measures is not in their interest, while minority of the member states within the Union establish that adoption of such measures is necessary as it is damaging their local markets, what can the Council do in this regard, and how this action of the Council stands reviewable by the Judicature? The new threshold test incorporated in the Lisbon Treaty related to member states representing 65% voting rights within the Council further legitimise the vote in the Council making it still less appropriate for review by the Courts.

#### **4.5 PROVISIONAL ANTI-DUMPING DUTY IMPOSED ON UNBLEACHED COTTON FABRICS THROUGH COMMISSION REGULATION (EC) NO 773/98**

The investigation was started as a result of a complaint filed by (Eurocoton) on behalf of Union manufacturers constituting a major percentage of Union manufacture of the like product. As numerous exporters, importers and complainants involved, sampling techniques were applied. The concerned product (unbleached cotton fibres) is produced in a great diversity of types or assemblies,

according to a grouping of the count (weight) of the yarn used, the number of threads used, and the way yarns are interlaced.<sup>54</sup>

#### **4.5.1 NORMAL VALUE**

After assessing the overall representativeness of domestic sales, type comparability and type-specific representativeness, and after performing the ordinary-course-of-trade test, the Commission found that three companies in the sample had representative local sales of the product concerned during the IP, while differentiating the ordinary trade of business from minimum quantitative threshold 5% of domestic sale.<sup>55</sup>

The representative domestic sales of the three companies were found to be in the ordinary course of trade. However, for one company, there was only one type sold domestically which was comparable to the exported types, whereas for another company, two types sold domestically were comparable to the exported types. The third company had no comparable type. In those circumstances, the Commission concluded that normal value for Pakistan should be constructed in all cases except for one type for one company and two types for another company, which are founded on the prices, paid in the normal course of business by the non-related consumers in the exporting state.<sup>56</sup>

For all but three types of the concerned product sold for export to the Union by the four cooperating traders selected, normal value was calculated pursuant to Article 2(3) on the basis of constructed value. In the case of the three companies with local sales, this was done in accordance with Article 2(6)<sup>57</sup> by adding the

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<sup>54</sup> Commission Notice of initiation of an anti-dumping proceeding concerning imports of unbleached cotton fabrics originating in the People's Republic of China, Egypt, India, Indonesia, Pakistan and Turkey [1997] OJ C 210 /09

<sup>55</sup> Commission Regulation (EC) No 773/98 imposing a provisional anti-dumping duty on imports of certain unbleached cotton fabrics originating in the People's Republic of China, Egypt, India, Indonesia, Pakistan and Turkey [1998] OJ L 111/19, Para 125

<sup>56</sup> Ibid, Para 126

<sup>57</sup> Council Regulation (EC) No. 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Community [1996] OJ L 056, art 2(6)

exporters' own domestic SG&A expenses and domestic profit margin to the manufacturing cost of the exported types.<sup>58</sup>

The other cooperating company in the sample did not have domestic sales. In accordance with Article 2(6), normal value for these exporters was calculated by addition to the production costs of their exported types the average of the local SG&A costs and the local turnover margin determined for the three companies with representative and profitable domestic sales.<sup>59</sup>

#### **4.5.2 COMPARISON**

An adjustment to normal value was claimed by all Pakistani exporters/producers in respect of import charges and duties borne by materials, physically incorporated in the like product which was refunded on export of the product under consideration. However, the investigation revealed that the amounts of import charges and duties refunded exceeded the amounts actually included in the cost of raw materials utilised. Therefore, according to Article 2(10) (b), the adjustment was restricted to the amounts actually included in the price of the raw materials.<sup>60</sup>

#### **4.5.3 DUMPING MARGIN**

The comparison shows the presence of dumping in export transactions of all the exporters in the sample. The DM stated as a proportion of the EP at Union market are the following:

- (I) Sapphire Group (Diamond Fabrics Ltd, Amer Fabrics Ltd) 15.6%
- (II) Nishat Group (Nishat Mills Ltd, Nishat Fabrics Ltd) 32.5%
- (III) Kohinoor Raiwind Mills Ltd 11.7%

Participating traders get the normal dumping margin of the specimen. Communicated as a rate of the EP at EU market, the margin is 19.2%. In perspective of high level of collaboration by Pakistani exporters, the DM for non-collaborating traders was established at the level of the margin of the trader with

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<sup>58</sup> Commission Regulation (EC) No 773/98, Para 127-128

<sup>59</sup> Above (n 55) Para 129

<sup>60</sup> Ibid, Para 132-134



the most higher dumping margin in the specimen communicated as a rate of the export price at EU border, the margin is 32.5%.<sup>61</sup>

#### 4.5.4 ANALYSIS

It could be concluded that the domestic sale of three traders out of total five was found to be in the ordinary course of trade and representative (5%) of export sale. However, NV could not be calculated on the basis of actual price paid on local market, as one trader was selling only one type, the other was selling only two types (out of five) of product concerned on the domestic market, while the third exporter was not selling any type of product concerned on domestic market. Hence the question may arise that if the third exporter was not selling any type of product on the domestic market, then how its domestic sale may be considered as representative of export sale?

Therefore, the Commission in accordance with Article 2(6) decided to construct the normal value for all three traders and for all other types of product concerned except three types whose sale was found to be sufficient on domestic market. Thus in respect of first trader, the normal value of other four types (out of five) of product concerned, and with respect to the second trader the normal value of other three types of product concerned were constructed by adding their own SG&A costs and profit margin incurred on one type of product concerned and two types of product concerned respectively.

In US-Softwood Lumber V (Art. 21.5-Canada)<sup>62</sup>, the appellate body concluded that Article 2.2 of the WTO Agreement<sup>63</sup> does not restrict the division of the product concerned into different categories for different procedures through the investigation, for example comparison of the NV and EP.<sup>64</sup> However, Vermulst

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<sup>61</sup> Commission Regulation (EC) No 773/98, Para 135-138

<sup>62</sup> WT/DS264, Panel Report, United States-Final Dumping Determination on Softwood Lumber from Canada (Adopted 13 April 2004) [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds264\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds264_e.htm) Accessed on 30th June 2016

<sup>63</sup> The General Agreement on Tariffs and Trade 1994 ("GATT 1994") (15<sup>th</sup> April 1994) <[https://www.wto.org/english/docs\\_e/legal\\_e/gatt47\\_e.pdf](https://www.wto.org/english/docs_e/legal_e/gatt47_e.pdf)> accessed 10 June 2015

<sup>64</sup> Henrik Andersen, *EU Dumping Determinations and WTO Law* (Kluwer law International 2009) 136

argues that less than 5% ordinary course of trade rule, does not imply that the type to type based test may be carried out. Thus, the EU investigative bodies' practice of applying the 5% test on each type of product individually may violate WTO law.<sup>65</sup>

The methodology adopted by the Commission to construct normal value involves many arbitrary decisions and choices. The evaluation of reasonable profit margin is tricky. Likewise, calculation of SG&A costs may also be contaminated in various ways. Thus constructed normal value may tend to calculate artificial NV which may not sufficiently represent the actual NV paid at the domestic market.<sup>66</sup>

It is unclear whether division of product concerned into specific product control numbers (PCNs) and then usage of arbitrary methodologies to calculate their injury margin and dumping margin finds its basis from ADA. Due to the widespread usage of CNV methodologies, it is crucial to evaluate the desirability of the investigators to the exclusion of 20% below cost sale on a PCN basis. To bring more consistency, the method of calculation of 'reasonable profit margin' for calculation of CNV also needs to be reviewed.<sup>67</sup>

The EU Courts held in Cases T-394/13<sup>68</sup> that substantial differences may also be noted between all the products included in the definition of the product concerned, therefore the institutions by grouping them under the same category do not commit manifest error of assessment. The European Union institutions may take account of a number of factors when defining the product concerned, among which the physical, technical and chemical characteristics of the products are naturally important, but without necessarily having priority (Case T-314/06).<sup>69</sup>

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<sup>65</sup> Edwin Vermulst, *The WTO Anti-Dumping Agreement* (Oxford University Press 2005) 30, 32

<sup>66</sup> Edwin Vermulst, 'The 10 Major Problems with the Anti-Dumping Instrument in the European Community' (2005) 39(1) *Journal of World Trade* 105, 108

<sup>67</sup> *Ibid*

<sup>68</sup> Case T 394/13, *Photo USA Electronic Graphic, Inc. v Council of the European Union* [2014] OJ C 274, Para 61

<sup>69</sup> Case T-314/06, *Whirlpool Europe Srl v Council of the European Union* [2010] ECR II-05005, Para 138

However, the profitability of all five types of product concerned may significantly vary, thus usage of profit margin incurred on one type to construct the normal value of other four types may challenge the accurate calculation of profit margin for other types. Moreover, as the third trader does not sell any type of product concerned, it is not clear which profit margin was used (as the Commission claimed to use its own SG&A costs and profit margin) to calculate its normal value.

However, according to Article 2(6) (c) it may be the profit margin incurred on any other product of same general category being sold on domestic market by that trader. Alternatively, in accordance with Article 2(3), the Commission also had the option to calculate normal value on the basis of EP, in the normal course of business, to a suitable third country. The author, however, suggests that instead of calculating NV on the basis of same general category, the Commission may have recourse to the price paid in appropriate third country. However, Van Bael and Bellis note that in order to construct NV the EU institutions (the Commission and the Council) have rarely used the actual prices paid by consumers in the third country.<sup>70</sup>

The EU Courts held in Case C-633/11<sup>71</sup> and Case T-192/08<sup>72</sup> that Article 18(1) of the basic regulation allows the institutions to use the facts available where concerned party refuse to provide relevant information otherwise, the information provided by the trader is not appropriate or misleading and no other viable source of collection and verification of information is available. And the institutions have wide discretion in AD investigations due to the complex economic factors involved however, the judicial review is restricted to evaluate that if applicable law is applied correctly and if the facts relied upon are stated correctly.

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<sup>70</sup> Van Bael and Ballis, *EU Anti-Dumping and other Trade Defence Instruments* (5th Edition, Kluwer Law International 2004) 64

<sup>71</sup> Case T 633/11, *Guangdong Kito Ceramics Co. Ltd v Council of the European Union* [2014] OJ C 32, Para 132-136

<sup>72</sup> Case T-192/08, *Transnational Company 'Kazchrome' AO and ENRC Marketing AG v Council of the European Union* [2011] ECR II-07449, Para 276

Consequently, the EU courts have predominantly restrained themselves from active judicial review, excusing the Commission on the grounds of complex economic calculations involved. However, the review of investigations of the Commission and judgments of the court reveals that EU courts hardly ever encounter complex economic calculations and rarely define ‘complex economic calculations’.<sup>73</sup> Mostly, the aggrieved parties challenged the inappropriate application of the basic regulation in front of the courts.

For example, in the *Gul Ahmed* case (discussed in Chapter Five), the courts were asked to review the interpretation of ‘other known factors’ as made by the courts. Similarly, the practice of zeroing in bed-linen cases, as adopted by the institutions were challenged by foreign exporters, and in the ‘unbleached cotton fabric’ case the issue was raised of the reviewability of the Council’s failure to adopt the Commission’s proposal. Similarly, issues about the definition of ‘Community industry’ and required representative threshold of the Union industry have been called in question by the parties.

In other investigations too, the contested parties were mostly found to disagree about the definition of ‘like product’, calculation of ‘normal value’ and ‘dumping margin’. In the majority of cases however, there was no need of appraisal of complex economic indices by the courts. Instead, they had been called to assess the proper interpretation and application of the basic regulation, as made by the investigative authorities.

However, Lenaerts argued that judicial scrutiny, in terms of readiness of the courts to evaluate the factual context of cases, has substantially increased over time.<sup>74</sup> A major shift took place with the establishment of the Court of First Instance, which was constituted on the demand of member states, with the

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<sup>73</sup> Alexander Fritzsche, ‘Discretion, Scope of Judicial Review and Institutional Balance in European Law’ (2010) 47 (2) Common Market Law Review 361, 380; Van Woude, ‘The Court of First Instance: The First Three Years’ (1993) 16 (2) Fordham Intl. L.J. 412, 460

<sup>74</sup> Koen Lenaerts and Damien Gerard, ‘Decentralisation of EC Competition Law Enforcement: Judges in the Frontline’ (2004) 27 (3) World Comp 313; Panos Koutrakos, *Modern Studies in European Law: EU International Relations Law* (2<sup>nd</sup> Edition, Hart publishing 2015) 367

objective of active judicial protection in cases that involved complex factual assessments.<sup>75</sup>

Another point of view is that the courts have not applied the standard of review consistently, even in investigations involving similar questions of law and fact. According to Advocate General Cosmos, the intention of the courts does not seem to restrain its scope of intervention exclusively in Union investigations. The courts, however, want to remain their own masters: to decide in which matters they want to interfere or refrain.<sup>76</sup> Therefore it is observed that in some cases, where limited judicial review was expected, the courts comprehensively evaluated the institutions' practices; while in other cases the courts did not justify their limited judicial review.<sup>77</sup> The scope of judicial review and discretion is further discussed in section 5.6.

Additionally in the current investigation, it is found that the Commission had initiated AD investigation about alleged dumped imports of same product (unbleached cotton fabrics) originating from the same countries (China, India, Pakistan, Indonesia, Turkey and Egypt) 17 months prior to the current investigation. It was, however, lapsed due to the lack of simple majority in the Council supporting imposition of definitive duty. Hence, it is noted that just two months after expiry of the 15 month deadline to adopt definitive measures, the Commission initiated a fresh investigation.

Furthermore, it is noted that in both investigations the same Pakistani cooperative traders were included in the sample. However, the Commission calculated significantly varying dumping margins for them under both investigations. Thus, for Sapphire group of industries the dumping margin calculated in later investigation through Commission regulation (EU) 773/98 is found to be a bit

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<sup>75</sup> Van Bael, 'Discretionary Powers of the Commission and Their Legal Control in Trade and Antitrust Matters' in Schwarze (ed.), *Discretionary Powers of the Member States in the Field of Economic Policies and Their Limits Under the EEC Treaty* (Nomos Baden-Baden 1988) 173

<sup>76</sup> Case C-93/98, *French Republic v. Ladbroke Racing Ltd and Commission* [2000] ECR I-03271, Opinion of Advocate General Cosmos

<sup>77</sup> Ibid

lower (15.6%)<sup>78</sup> as compared to DM (22.3%) calculated in the former investigation through Commission regulation (EU) 2208/96.

For Nishat group of industries the dumping margin was significantly increased from 17% to 32.5% in the latter investigation.<sup>79</sup> In the same way for Kohinoor industries, the dumping margin was reduced from 30% to 11.7%.<sup>80</sup> This drastic increase and decrease of dumping margin for the same traders in a limited time period also raises questions about the consistency of Commission's calculation methodology.

Under Article 6(9) of the basic regulation AD investigations will be concluded within 15 months from the date of initiation of the proceedings. Just as the former proposal of imposition of definitive duty was lapsed, the current proposal also lapsed due to the lack of simple majority in the Council supporting the imposition of definitive duty. In the present case, the 15 months deadline ended on 11 October 1998. As a consequence, the provisional duties collected pursuant to Regulation (EC) No 773/98 were released.

## **4.6 CASE ANALYSIS OF CASE T-192/98**

### **4.6.1 FACTS**

The facts of this case were same as were of Case C-76/01<sup>81</sup> and Case T-213/97<sup>82</sup>. The Commission levied provisional ADD on imports of unbleached cotton fabrics originating from Pakistan, UAE, Indonesia and Turkey by the above-mentioned Commission Regulation (EC) 773/98<sup>83</sup>. Thereafter the Council failed to adopt definitive AD measures due to the lack of majority. The appellant of this case

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<sup>78</sup> Commission Regulation (EC) No 773/98 of 7 April 1998 imposing a provisional anti-dumping duty on imports of certain unbleached cotton fabrics originating in the People's Republic of China, Egypt, India, Indonesia, Pakistan and Turkey [1998] OJ L 111/19, Article 1 Para 4

<sup>79</sup> Ibid

<sup>80</sup> Ibid

<sup>81</sup> Case C-76/01, *Eurocoton v Council of the European Union* [2003] ECR I-10091

<sup>82</sup> Case T-213/97, *Committee of the Cotton and Allied Textile Industries of the European Union (Eurocoton) v Council of the European Union* [2000] ECR II-03727

<sup>83</sup> Above (n 80)

however filed petition in the General Court and pleaded for the annulment of the Council's decision as it did not state adequate reasons for its decision.<sup>84</sup>

#### 4.6.2 JUDGEMENT

While referring the judgement of the Court of Justice in case *Eurocoton and Others v Council*,<sup>85</sup> the General Court established that where the Council elects not to implement a proposal for a regulation commanding definitive AD measures, it must offer a satisfactory statement of reasons which demonstrates evidently and unambiguously why, there is no need to adopt the proposal. Consistence with the obligation to state reasons in this way includes the demonstration being referred to bring up the absence of dumping or resultant harm, or that the Union interest does not call for imposition of such definitive AD duty.<sup>86</sup>

The only reason provided by the Council regarding failure to adopt the Commission's proposal to levy definitive ADD is the lack of a simple majority in the house. In accordance with the findings of the Court of Justice in *Eurocoton and Others v Council*<sup>87</sup>, such a statement does not satisfy the obligation to state reasons and such reasons must be appropriate to the act at issue.. Consequently, the contested decision should be annulled on the same ground of the Council's failure to state reasons in the decision rejecting the proposal for a regulation submitted to it by the Commission.<sup>88</sup>

#### 4.6.3 COMMENT

The researcher submits that as discussed above in Case T-213/97<sup>89</sup> and Case C-76/01, the plea of the applicant should not be admissible, as the Council's failure to adopt the Commission's proposal is not reviewable. Being the legislative act if it is admitted that it is reviewable, it would mean to curtail EU Council's powers

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<sup>84</sup> Case T-192/98, *Comité des industries du coton and des fibres connexes de l'Union européenne (Eurocoton) v Council of the European Union* [2005] ECR II-00002, Para 6

<sup>85</sup> Case C-76/01, *Eurocoton v Council of the European Union* [2003] ECR I-10091, Para 89

<sup>86</sup> Above (n 84) Para 15

<sup>87</sup> Above (n 85) Para 88

<sup>88</sup> Above (n 84) Para 36

<sup>89</sup> Above (n 82)

by means of extra active judicial review. It also means to take decision power from EU member countries which declare their common will by majority vote and to grant it to the Judicature.

This thesis contests the applicant's assertion that the EU Council does not have any power to reject the Commission's proposal. The Council is an independent institution which acts in the largest interest of the Community. It has all due authority to review the proposals of the EU Commission. If it cannot reject the Commission's proposal, then there is no point for the existence of this institution; instead the Commission should be considered sufficient in this regard.

Evenett and Vermulst interpret this case as a confrontation between the EU institutions and the member states. They establish that, after the failure of the Commission's proposal to adopt definitive measures against cotton fabric (due to lack of simple majority in the Council), the EU Commission launched a fresh investigation, this time targeting only unbleached cotton fabric. After the failure of the second proposal, Eurocoton challenged the decision in the ECJ. The Court proclaimed that the EU Council was under obligation to state reasons for its failure to adopt definitive measures. Evenett *et al.*, find the Court's interpretation a compulsion upon the Council. The EU Council thus cannot disagree with the Commission, and it will have to act upon the proposal of the Commission, otherwise it will have to state reasons for its failure.<sup>90</sup>

The Council's statement of reason that the proposal cannot be adopted due to the lack of majority in the Council should be considered sufficient in this regard. There may be no more adequate reason for non-adoption of Commission's proposal. It should be sufficient to understand and explain that majority of the member states do not want the imposition of definitive measures on unbleached cotton fabrics importing from Pakistan. The Court cannot simply oversee this reason provided by the Council and analogue that no specific reason for failure to adopt certain measures is provided.

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<sup>90</sup> Simon Evenett and Edwin Vermulst, 'The Politicisation of EC Anti-Dumping Policy: Member States, Their Votes and the European Commission' (2005) 28(5) *The World Economy* 701, 706



As in Case C-76/01,<sup>91</sup> the Court of Justice has already established that lack of simple majority cannot be considered as sufficient reason, therefore being the subordinate Court, the general Court in this case has just upheld the decision of its superior Court. As the facts and questions of law are overwhelmingly the same in both judgements, therefore the general Court cannot give an inconsistent verdict, because as a matter of legal principles the decisions of the higher Courts have binding effect for the subordinate Courts if the same question of law is involved in both cases.

Lastly, it was already decided in Case C-76/01<sup>92</sup> by the EU Court of Justice that lack of simple majority cannot be considered as a sufficient statement of reason for failure to act upon the Commission's proposal. Surprisingly, despite the said judgement, the Council did not specifically state that the measures could not be adopted because the Community interest does not call for intervention etc. whatever was the possible reason. It was already known that failure to state any such reason may again call for judicial intervention.

However, Sapir<sup>93</sup> and Wellhausen<sup>94</sup> noted that the Community interest test is hardly ever invoked to reject proposed protective measures. In most cases, once the alleged dumping and material injury is proved, and measures are expected to relieve the complainant industry, it is automatically presumed that Community interest calls for the imposition of safeguard measures.

Having said that regarding the Court's decision that the Council must state that there is no dumping or causal link between alleged dumped imports and the injury caused, or it is not in the Union interest to adopt particular measures, it should be stated as possible adequate statement of reason. It could be submitted that it is not the Council's obligation to establish the Community interest, dumping or existence of causal link; instead all these facts are established by the Commission.

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<sup>91</sup> Above (n 81)

<sup>92</sup> Above (n 84)

<sup>93</sup> Andre Sapir, 'Some Ideas for Reforming the Community Anti-Dumping Instrument' (2006) <[http://trade.ec.europa.eu/doclib/docs/2006/august/tradoc\\_129815.pdf](http://trade.ec.europa.eu/doclib/docs/2006/august/tradoc_129815.pdf)> accessed 30<sup>th</sup> June 2016

<sup>94</sup> Marc Wellhausen, 'The Community Interest Test in Antidumping Proceedings of the European Union' (2001) 16(4) American University International Law Review 1027, 1046

Therefore, it should not be expected from the EU Council to state any of the above particular reasons as a reason for their failure to adopt the Commission's regulation. However, the very fact that a minority of the member states are in favour of the Commission's proposal should be considered as sufficient reason for the Council's failure to adopt the Commission's regulation.

To sum up, the result of the written procedure of 16 May 1997 does not establish a reviewable act within the meaning of Article 173<sup>95</sup> of the Treaty and as it was established in Case T-3/93<sup>96</sup>. It does not constitute a measure in the expressions of the judgements in both above-mentioned cases. In fact there was no act at all, as the Council confined itself to doing nothing. The Commission's provisional regulation did not expire due to any act of the Council; instead it expired as its maximum term of six months was expired.

#### **4.7 COMPLAINT FOR IMPOSITION OF PROVISIONAL MEASURES ON CERTAIN SYNTHETIC STAPLE FIBRE ORIGINATING FROM PAKISTAN**

The Commission has received a complaint alleging that imports of certain synthetic staple fibre fabric being imported from Pakistan, Thailand, India and Indonesia are dumping the EU market thus triggering material injury to the Union industry concerned.<sup>97</sup>

##### **4.7.1 ALLEGATION OF DUMPING**

As attempts, documented by the complainant, to obtain reliable sales prices on the domestic markets of India, Indonesia, Pakistan and Thailand proved unsuccessful, and given that there are allegedly no price-lists or official publications available of prices of the concerned product in the four abovementioned countries, the allegation of dumping is founded on a comparison between constructed NV in the

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<sup>95</sup> Article 173 of the treaty establishing the European Community [2002] OJ C 325

<sup>96</sup> Case T-3/93, *Air France v Commission of the European Communities* [1994] ECR II-121, Para 44

<sup>97</sup> Commission Notice of initiation of an anti-dumping proceeding concerning imports of certain synthetic staple fibre fabric originating in India, Indonesia, Pakistan and Thailand [1994] OJ C-17/04, Para 2

exporting markets concerned and export prices to the Community for selected product types, allegedly representative of imports of the product concerned.<sup>98</sup>

#### **4.7.2 NORMAL VALUE**

The normal values have been constructed by adding raw material costs based on the market prices of polyester fibre in each of the exporting countries; labour costs per country, as annually reported by an international consulting company; other costs such as energy, fuel, water, auxiliary materials, spare parts and depreciation obtained through international experts; and a profit margin of 5%. On this basis, the estimated dumping margins alleged by the complainant are significant.<sup>99</sup>

#### **4.7.3 ALLEGATION OF INJURY**

With respect to injury, the complainant has given adequate proof that the imports in question have increased from 38 700 tonnes in 1989 to 71 433 tonnes in 1992, an increase of 85%. It is alleged that this represents a development in the Community market share from 18.5% in 1989 to 37.5% in 1992. It is furthermore alleged that the prices at which these imports are sold in the Union significantly destabilise the prices of Union manufacturers and forced the latter to lower their prices to levels that no longer permit the recovery of their costs of production.<sup>100</sup>

#### **4.7.4 WITHDRAWAL OF COMPLAINT**

Having decided, after consultation, that there is adequate proof to legitimise the start of a procedure, the Commission has initiated inquiry according to Article 7 of Council regulation (EEC) No 2423/88 (I). However, no further proceedings were held in this regard, as the complainant (Eurocoton) withdraw its complaint.

#### **4.7.5 ANALYSIS**

This regulation, however, does not contain comprehensive information about the investigation conducted by the Commission in this case. Thus, it is not known

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<sup>98</sup> Ibid, Para 4

<sup>99</sup> Ibid, Para 5

<sup>100</sup> Ibid, Para 6

how the Commission calculated the normal value and dumping margin. The regulation states that normal value was constructed by adding the raw material costs, profit margin and SG&A costs, but it is not clear which factors forced the Commission to construct normal value; probably none of the companies may have representative sales. Kapteyn *et al.* contend that AD laws may appear simple and clear, but actually they are complex in their application. It has never been straightforward to calculate normal value and export price through AD investigations.<sup>101</sup>

Similarly, the regulation does not discuss the mechanism of calculation of dumping margin. It is not known if average EP was compared to the average NV, or individual export price on transaction basis was compared to the average normal value. Moreover, fair comparison, adjustments (rebates, taxes, duty drawbacks), whether they were granted or declined is not explained in the regulation. It lacks plenty of necessary information particularly about the calculations of injury margin, dumping margin etc. and generally about the whole investigation, which should be available to all concerned parties.

One of the structural problems with the EU's injury margin and dumping margin calculations originates from the confidential nature of relevant data relied upon to establish material injury. As no interested party (except the Commission itself) can have access to pricing information, it is impossible to verify injury margin calculations carried out by the Commission. Thus there is no other alternative but to rely upon the calculation skills and good faith of the Commission case handlers. Empirical evidence shows that, in cases where higher dumping margins are calculated, injury margins are lower than calculated dumping margins.<sup>102</sup>

In the past, after initiation of investigation, the withdrawal of complaint by the complainant was quite rare. However, in recent times, the transfer of information by the Commission to the complainant about lack of sufficient evidence about

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<sup>101</sup> Pieter Kuijper, 'External Relations' in Paul Kapteyn *et al.* (eds), *The Law of the European Union and European Communities* (4<sup>th</sup> edition, Kluwer Law International 2008) 1320

<sup>102</sup> Above (n 66) 105, 111

alleged dumping and injury was found to be an important reason for withdrawal of complaints.<sup>103</sup>

In this case, the researcher finds Eurocoton's withdrawal of complaint, a very unexpected and unreasonable step in this regard as the Commission concludes in its findings that during the last three months Pakistani export of staple fibre fabric increased by 85% (from 38,000 tons to 71,000 tons), which was really a huge increase in such a short span of time. And it was also established through the investigation that due to price undercutting, EU industry has suffered significantly and European exporters were forced to keep their prices lower, which does not even cover their cost of production.

If the Commission's findings are admitted to be true, then the withdrawal of complaint by the complainant is unthinkable. If the EU industry was actually suffering as heavily as reported by the figures of increased market share of Pakistani exports, then why will Eurocoton go for withdrawal of the complaint? In other words, such withdrawal means that EU industry, knowing that they are being substantially injured by Pakistani exports, allowed more injury to them.

According to Beseler, Union manufacturers may withdraw their complaint for three possible reasons: (i) the complainants realised that their complaint is ill-founded, thus they prefer to go for cartel arrangements with the foreign exporters; (ii) the complaint was filed to exert pressure on the foreign exporters to enter into such arrangements; (iii) or the exporters/importers or their authorities exert pressure on Union manufacturers to withdraw their complaint.<sup>104</sup> In such cases, the Commission may notify to continue the investigation even after the withdrawal.<sup>105</sup>

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<sup>103</sup> Edwin Vermulst, *EU Anti-dumping Law and Practice* (2<sup>nd</sup> edition, Sweet & Maxwell 2010) 41

<sup>104</sup> Johannes Beseler and Neville Williams, *Anti-dumping and Anti-subsidy Law: The European Communities* (Sweet & Maxwell 1986) 1-16

<sup>105</sup> Above (n 70), 350

In this case, one of the reasons may be that EU industry may not be injured in such a degree as it was reported to the EU Commission. In other words, erroneous figures regarding local production, export price or proportion of Pakistani exports were reported to the EU Commission. However, whatever was the reason, this investigation exposes the vulnerability of the investigating bodies to change its findings as per the highly implausible and unreliable figures reported to it. In the same way it also explores the in-efficiency of the EU Commission to verify the figures and calculate original dumping margin, which is not solely dependent upon figures reported to it but also cross-checking them on its own as well.

## **4.8 CONCLUSION**

The current chapter, along with the previous two chapters has attempted to answer the first research question of this study. It has examined the provisional ADDs imposed on unbleached cotton fabric, originating from Pakistan. Through this examination, the Commission's findings have been corroborated and contrasted with the applicable provisions from basic regulation and cases, as decided by the EU Courts. It has been identified that, excessive discretionary powers, available to the institutions, led to controversial conclusions drawn by them; which are mostly found to be in favour of the Union's manufacturers. In other words, the AD measures have been found to be applied strategically instead of competitively.

Moreover, this chapter has identified, the inconsistent approaches adopted by the General Court, and the EU Court of Justice regarding reviewability of the Council's failure to adopt definitive measures, based upon the proposal of the Commission. Within the context of other case law, it is however established that, the General Court's verdict was more logical and legally founded. On the other hand, the upper court's judgement declaring reviewability of the Council's failure to act upon the Commission's proposal was found to be controversial and challengeable. This chapter is linked with the next chapter, as the next chapter examines one of the prominent cases related to Pakistan, where both the General Court and the EU Court of Justice adopted inconsistent interpretations of Article 3(7).

**Table 4.1: Anti-dumping duties imposed on textile products originated from Pakistan**

**Source: Developed by author**

Product	Internal Case Number	Country	Status	Original Investigation				Measures in force		Interim Review			Corrigenda, Other types of reviews	Observations
				Initiation	Prov. measures	Def. measures	Termination	Type of measures	Level (Min-Max)	Initiation	Outcome	OJ Reference		
Bed Linen	AS464 R345	Pakistan	Expired	C316, 18.12.2002, p. 6		L66, 04.03.20 04, p. 1		Ad- valorem	0%- 8,5%	C196, 3.8.2004, p.2	Amendm ent of measures	L 121, 06.05.2006, p. 14	Amendment new exporters L202, 03.08.2007, p. 1.	
Bed Linen	AD 359	Pakistan	Terminat ed	C266, 13.09.96, p.2	L156, 13.06.97, p.11	L332, 04.12.97, p.1	L26, 30.01.20 02, p.1	Ad- Valorem	0%- 6,7%				Corrigendum L19, 24.01.98, p.83  Termination L26, 30.01.2012, p.1	
Cotton fabrics (unbleached)		Pakistan	Terminat ed	C210, 11.07.97, p. 10	L111, 09.04.98, p. 19  Corrected by L 154 28-05-98, p.37									15-month due date to force authoritative measures terminated before the Council

Cotton Fabrics (Unbleached)		Pakistan	Terminat ed	C17, 20.01.94, p. 6										Withdrawal of complaint
Cotton fabrics (unbleached)		Pakistan	Terminat ed	C50, 21.02.96, p. 7	L295, 20.11.96, p. 7									15-month due date to force authoritative measures terminated before the Council



## **CHAPTER FIVE: CASE ANALYSIS OF CASE T-199/04 AND CASE C-638/11**

### **5.1 INTRODUCTION**

To evaluate and analyse the application of anti-dumping (AD) laws by the EU Institution on Pakistani or other exporters, the best source is to analyse the case law, as it is enriched with legal debate, legality of issues and philosophy of law. Therefore, the writer decided to write a chapter on *Gul Ahmed Textile Mills (Pvt) Ltd. v Council*, giving an analytical analysis of the legal issues arising in this particular case, of which Article 3(7) of the Council Regulation (EC) No 1225/2009 and Article 3.5 of the WTO Agreement form the subject matter.

The whole discussion in this case revolves around the meaning and scope of ‘other known factors’ and ‘Causal link’. As a matter of fact, in 1996 on complaint of European Federation of Cotton and Textile Industries (Eurocoton) and after consulting with the Advisory Committee, the EU Commission launched Regulation EC No 1069/97,<sup>1</sup> through which it levied a provisional AD duty on cotton-type bed linen originating in Pakistan, Egypt and India. The provisional duty later transformed into a definitive duty via Council regulation EC No 2398/97.<sup>2</sup>

Later in 2002 the EU, through its regulation 2501/2001, granted Generalised System of Preference (GSP) status to Pakistan, which results in benefit to the textile industry of the latter. However, upon the complaint of Eurocoton, the EU via the Council’s Regulation No 397/2004 again imposed dumping duties on

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<sup>1</sup> Commission Regulation (EC) 1069/97 of 12 June 1997 imposing a provisional anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan [1997] OJ L156/11

<sup>2</sup> Council Regulation (EC) 2398/97 of 28 November 1997 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan [1997] OJ L332/1

Pakistani cotton-type bed linen, comprising the investigation period (IP) from 2001 to September 2002.

Thereafter Gul Ahmed Textile Mills Ltd challenged the alleged dumping duty. However, in *Gul Ahmed Textile v Council*, the Court of First Instance held that while evaluating the influence of dumped imports on the Union industry, Union institutions must also analyse the impact of other known factors. And the association representing the Pakistani textile exporters duly drew the attention of EU institutions that the alleged injury to the EU market has its origin in removal of recent AD duties on Pakistan and grant of GSP status to Pakistan instead of imports from Pakistan. Thus the Court annulled the Council's Regulation No 397/2004.

During an appeal made by the European Council before the Court of Justice; Fifth Chamber, the Court set aside the judgement of the General Court while reinstating the Council Regulation No 397/2004.<sup>3</sup> The Court established that, in assessing the causal link, it is not disputed that the EU institutions did not examine the two measures, i.e. the abolition of previous AD duty and grant of GSP status to Pakistan. They further held that the legislative amendments and the grant of GSP+ status could not be separated from the dumped imports, and the effect of the legislative amendments was on the dumped imports themselves instead of the Union market.

Moreover, under the meaning of Article 3(7) of the basic regulation, only those other known factors may be considered which are directly causing material injury to the Union. Hence the Court of Justice overturned the General Court's judgement.

Thus this chapter aims to analyse the interpretation of 'other known Factors' and causal link in the context of the relevant Articles of the EU Regulation and the WTO Agreement. Moreover, the author has looked into the meaning of the above-mentioned terms as defined by other case law and WTO Panel reports, and hence

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<sup>3</sup> Case C-638/11, *Council of the European Union v Gul Ahmed Textile Mills Ltd* [2013] OJ C 9, Para 39

has tried to establish the consistency or inconsistency of the application of laws by the EU institutions.

## **5.2 HOLDING (THE APPLIED RULES OF LAW)**

While determining the material injury or threat of material injury, the absolute increase in the volume of dumped imports or relative increase as compared to the production or consumption in the union shall be considered. While assessing the effect of dumped imports on prices, it would be analysed if there was substantial price dislocating by the dumped imports as compared to the price of like product manufactured by local producers, or if such imports are cause to depress prices and stop them increasing while they would otherwise have increased in normal course of business. However none of these factors can have conclusive effect.<sup>4</sup>

### **5.2.1 OTHER KNOWN FACTORS ARTICLE 3(7)**

To guarantee that harm brought about by other factors is not credited to the dumped imports, these known elements other than the dumped imports which in the meantime are harming the Union business should be analysed. Factors which may be considered in this appreciation incorporate compression in demand or changes in the pattern of utilisation; volume and costs of imports not sold at dumping costs; improvements in technology and export performance; restrictive trade practices of, and competition between, third nation and Union makers; and profitability of the Union business.<sup>5</sup>

### **5.2.2 ARTICLE 3(4) (b) OF THE EC REGULATION NO 1225/2009**

All or a combination of any of the above-mentioned economic factors, or any other appropriate relevant factor, which could give decisive effect, must be established in order to prove dumping. And such impact must exist to a degree, that it could be regarded as material. In other words it should be so evident and

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<sup>4</sup> Council Regulation (EC) 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Union [2009] OJ L343/51, art 3(3)

<sup>5</sup> Ibid, art 3(7)

exploratory that the existence of other prejudiced elements may be easily ruled out by the relevant institutions.<sup>6</sup>

### **5.3 CASE ANALYSIS OF GUL AHMED TEXTILE (PVT) Ltd V COUNCIL OF THE EUROPEAN UNION CASE T-199/04**

#### **5.3.1 THE FACTUAL CONTEXT OF THE CASE**

The applicant, Gul Ahmed Textile Mills Ltd (Gul Ahmed), is a firm incorporated under Pakistani law, whose listed office is in Karachi (Pakistan). It is involved, in particular, in export sales and selling of bed linen. The applicant manufactures that merchandise in Pakistan and exports it to the European Union. It does not trade any bed linen on the local market in Pakistan, though it does vend various commodities there. On 30 July 1996 (Eurocoton)<sup>7</sup> filed a complaint against the said exporter; which concluded in the form of levy of definitive AD duty through Council regulation (EC) No 2398/97 on imports of Cotton-type bed linen originating from Egypt, India and Pakistan.<sup>8</sup>

On account of transitional arrangements in the field of market access for clothing and textile products in between the European Union and the Islamic Republic of Pakistan, an MOU<sup>9</sup> was signed in Brussels on October 2001. Further, in December 2001, Council Regulation (EC) 2501/2001 was adopted, which granted generalised scheme of preferential tariff arrangements for the period from January 2002 to December 2004; Pakistan began to benefit from that scheme in-so-far as it applied to countries combating drug production and trafficking. Resultantly, since January 2002 Pakistani textile products began to enter European Union free of any dumping duty.<sup>10</sup>

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<sup>6</sup> Above (n 4)

<sup>7</sup> The Committee of Cotton and allied Textile Industries of European Union

<sup>8</sup> Case T-199/04, *Gul Ahmed Textiles (pvt) Ltd v Council* [2011] ECR II-00321, Para 1-2

<sup>9</sup> Memorandum of understanding

<sup>10</sup> Above (n 8) Para 3

The preceding AD duties were eliminated as from 30 January 2002, in relation to Pakistani producers, by Council Regulation (EC) No 160/2002<sup>11</sup> of 28 January 2002 amending Council Regulation (EC) No 2398/97.<sup>12</sup> On November 2002 Eurocoton, on behalf of manufacturers constituting a major percentage of Union industry, once again lodged complaint regarding breach of AD law. Hence once again Commission initiated AD investigation against exporters of Cotton-type bed cloth originating from Pakistan. The examination identifying with the dumping and resultant damage secured the period from 1 October 2001 to 30 September 2002. The examination of the developments pertinent for the calculation of injury enclosed the period from 1999 to the end of the investigation period (IP).<sup>13</sup>

The Commission made a sample of six companies for the purpose of investigating, constituting more than 35% by volume of Pakistani exports of cotton bed linen to the companies. A questionnaire was sent to the said six companies inviting them to reply the questionnaire. All the Pakistani exporting manufacturers included in the sample provided answers to the questionnaire, as did the five Union producers behind the complaint included in the sample. In addition, answers to the questionnaire had also been provided by two independent importers in the Union, and by three Pakistani exporting producers not included in the sample who had requested individual treatment.<sup>14</sup>

In a document ‘observation on injury’, the association representing the Pakistani textile manufacturers disputed the substance of material injury and alleged dumping. It also argued about the absence of causal link between alleged injury and export from Pakistan. In order to verify the information it had received in the

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<sup>11</sup> Council Regulation (EC) 160/2002 of 28 January 2002 amending Council Regulation (EC) No 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan, and terminating the proceeding with regard to imports originating in Pakistan [2002] OJ L26/1

<sup>12</sup> Council Regulation (EC) 2398/97 of 28 November 1997 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan [1997] OJ L332/1

<sup>13</sup> Above (n 8) Para 4-6

<sup>14</sup> Ibid, Para 7

replies to the questionnaire, the Commission carried out verification visits at the premises of the exporting producers as per Article 6<sup>15</sup> of the basic regulation.<sup>16</sup>

However, the Commission received an unidentified letter addressed individually to the officials in charge for the verification visits, while carrying out verifications at the second exporting producing company, Al-Abid Silk Mills, Karachi, threatening them with death. Therefore, the verification visits had to be interrupted. Thus it was only possible to conduct a full verification at the properties of one exporting manufacturer, namely Gul Ahmed, and a partial verification at the sites of another exporting manufacturer. The exports of those two companies represent more than 50% of the total CIF value of exports to the Union by the exporting producers in the sample.<sup>17</sup>

On 2 March 2004, the Council assumed regulation (EC) No 397/2004<sup>18</sup> levying definitive AD measures on imports of cotton-type bed linen originating in Pakistan. By the challenged regulation, the Council levied AD duty of 13.1% on imports of bed linen of cotton fibres bleached, dyed or printed, pure or mixed with man-made fibres or flax originating from Pakistan. Subsequently, the contested regulation was amended by Council Regulation (EC) No 695/2006<sup>19</sup> of 5 May 2006, in relation to the applicant. The amending regulation established the rate of definitive AD duty applicable to the products concerned manufactured by the applicant at 5.6%.<sup>20</sup>

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<sup>15</sup> Above (n 4), art 6

<sup>16</sup> Above (n 8) Para 10

<sup>17</sup> Ibid, Para 11

<sup>18</sup> Council Regulation (EC) 397/2004 of 2 March 2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan [2004] OJ L66/1

<sup>19</sup> Council Regulation (EC) No 695/2006 of 5 May 2006 amending Regulation (EC) No 397/2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan [2006] OJ L121/14

<sup>20</sup> Above (n 8) Para 15-17

## **5.3.2 ARGUMENTS OF THE PARTIES**

### **5.3.2.1 PLEA AND ARGUMENTS OF GUL AHMED**

On the basis of the above-mentioned facts, the claimant sought the annulment of the contested Regulation, while the Council, supported by the Commission applied for the dismissal of the plea.

The applicant relies on five pleas in law in support of its application for annulment, which are as follows:-

1. Infringement of the 1994 AD Code, with regard to calculation of the normal value and manifest error of assessment and infringement of Article 2(3) and (5) and Article 18(4) of the basic regulation.
2. Infringement of the obligation to state adequate reasons under Article 253 EC, with regard to drawback adjustment in the comparison of the export price and normal value and infringement of Article 2(10) of the basic regulation, of the 1994 AD Code.<sup>21</sup>
3. With regard to the determination of material injury, manifest error of assessment and infringement of Article 3(1), (2), (3) and (5) of the basic regulation, and of the 1994 AD Code.
4. With regard to the establishment of a causal link between the suspected injury and allegedly dumped imports, manifest error of assessment and infringement of Article 3(6) and (7) of the basic regulation, and the 1994 AD Code.<sup>22</sup>

The Court considers it appropriate to rule first on the fourth part of the plea.

The applicant alleges, in crux, that the Council made a manifest error of law by neglecting to watch the impact of the execution of a scheme of GSP for Pakistan towards the beginning of 2002, and that the end of the preceding AD duty on products from Pakistan had the effect of breaking the causal connection between

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<sup>21</sup> Ibid

<sup>22</sup> Ibid, Para 28

the suspected dumped imports and the injury professedly endured by the Union business.<sup>23</sup>

Firstly, according to the applicant, neither the list provided in Article 3.5 of the 1994 AD Code or in Article 3(7) of the basic regulation is exhaustive. The rationale followed by Article 3.5 of the WTO Agreement<sup>24</sup>, which is to guarantee that the effects of other factors triggering the injury sustained by the national industry are not accredited to the imports under inquiry, would fail if the Council's proposed interpretation of Article 3(7) of the basic regulation was followed.<sup>25</sup>

Next, concerning the Council's statement that three of the six exporters forming the subject-matter of the sample taken into account in this case had not been subject to previous AD duties, the applicant replies that the whole sample constituted only one-third of the imports at issue during the investigation period. And that the proportion of imports not affected by the Ad measures was relatively low, and the abolition of ordinary customs duties under the GSP scheme in favour of Pakistan had, in itself, the effect of significantly reducing the price of imports of Pakistani origin, of the order of 10%, which the Council did not take into account. Moreover, even the complainants acknowledged, in their complaint, the effects of that abolition of duties on the sudden increase of imports from Pakistan.<sup>26</sup>

The claimant further argues that the injury suffered by the Union industry was concentrated between the end of 2001 and the end of the IP, that is to say after the legislative framework applicable to the Union market had already changed; the same fact is evident from several economic indicators put forward by the Council in support of its claims, such as the prices of the Union industry, the fall of its profitability level, sales volume and the market share of the imports concerned.

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<sup>23</sup> Case T-199/04, *Gul Ahmed Textiles (pvt) Ltd v Council* [2011] ECR II-00321, Para 31

<sup>24</sup> The General Agreement on Tariffs and Trade 1994 ("GATT 1994") (15<sup>th</sup> April 1994) <[https://www.wto.org/english/docs\\_e/legal\\_e/gatt47\\_e.pdf](https://www.wto.org/english/docs_e/legal_e/gatt47_e.pdf)> accessed 10 June 2015

<sup>25</sup> Above (n 8) Para 40

<sup>26</sup> Ibid, Para 42



The applicant thus argues that the Council has not established the existence of a ‘negative trend’ during the period considered, which cannot be explained by the abolition of the duties in question.<sup>27</sup>

With reference to Article 3(7) of the Council regulation (EC) 384/96, the association representing Pakistani textile manufacturers and exporters (APTMA) maintained in particular that the alleged damage to the EU industry instigated by the evolution of the market might not be credited to imports originating in Pakistan subject to the AD proceeding. Moreover, the fact that the surge in imports of bed linen from Pakistan during the first quarter of 2002 was helped by another EU concession granted to Pakistan of benefiting from a duty-free access to EU bed linen market under the anti-dumping GSP special regime has been affirmed by the claimant (Eurocoton). It was therefore clear that instead of dumping, the abolition of previous duties was the reason behind the increase in magnitude of exports from Pakistan to EU.<sup>28</sup>

The associations representing Pakistani exporting producers argued that imports from Pakistan are not considered as the cause of an injury sustained to Union commerce by Union producers in their observations submitted to the Court. According to European producers, the industry had to fight low prices arising, inter alia: first from the elimination of the preceding measures on imports from Pakistan, whether ordinary customs duties or AD duties; and secondly, from the comparative advantage of developing countries like Pakistan.<sup>29</sup>

### **5.3.2.2 LEGAL BASIS OF COUNCIL’S ARGUMENTS**

In the first place, under the significance of Article 3(7), the Council argues that regulatory procedures do not constitute ‘known factors’ except of the dumped imports which are damaging Union business simultaneously. Under the meaning of the said Article, ‘other known factors’ are not the amendments to the regulatory framework of the market, but only the developments or conduct on the market.

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<sup>27</sup> Ibid, Para 43

<sup>28</sup> Ibid, Para 46-47

<sup>29</sup> Ibid, Para 48

The Council adds that since the introduction or reduction of the duties applied only to imports, they can have an impact only on the volume and price of the dumped imports, not on the Union industry. Moreover, at the time of the determination of the cause of the injury, those economic indicators had already been taken into consideration.<sup>30</sup>

In the second place, the Council argues that even if the grant of preferential tariff arrangements in favour of Pakistan and the abolition of the previous AD duties could be regarded as known factors other than the dumped imports which are damaging the Union business simultaneously, those factors could not break the causal link referred to above, as they were not relevant in this case.<sup>31</sup>

The Council argues that the previous AD duties were not abolished until 30 January 2002, and that the relevant clause of the scheme of generalised tariff preferences did not enter into force until 1 January 2002. As the IP ran from 1 October 2001 to 30 September 2002, both those elements could not explain the negative trend during the period considered, at most they could have an impact on part of the investigation period. Furthermore, three of the six Pakistani exporters included in the sample, including the applicant, had not been subject to AD duties under the previous regulation.<sup>32</sup>

The Council further argues that the prices of the Union industry remained stable or increased, following the elimination of the preceding AD measures and the entry into force of the GSP+ scheme in favour of Pakistan, which showed that none of those events had a notable effect. Lastly, the Council submits that the applicant failed to raise that point during the administrative procedure. The applicant replies that the distinction made by the Council when interpreting the expression 'known factors', except for the dumped imports which are damaging the Union business concurrently, between, on the one hand, market-related

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<sup>30</sup> Ibid, Para 33

<sup>31</sup> Ibid, Para 35

<sup>32</sup> Ibid, Para 36

developments or conduct, and on the other, amendments to the legislative context of the market, is doubtful, as it finds no support in the applicable legislation..<sup>33</sup>

However, the Council further argued that the performances of European undertakings could not be directly affected by the legislative amendments. In order to determine whether the causal link between the damage sustained by the Union business and the dumped imports from Pakistan had been broken, only the conduct on the market, subsequent to those amendments, should be taken into consideration.<sup>34</sup>

### **5.3.3 JUDGEMENT OF THE GENERAL COURT**

#### **5.3.3.1 RATIO DECIDENDI**

The General Court held that the factor consisting in amendments to the legislative framework was known to the EU institutions not later than the date of the lodging of the complaint in the investigation in question. Therefore, it is necessary to assess the arguments of the applicant concerning the third part of the fifth plea.

As regards, more particularly, the consequences of a possible abstention by the EU institutions charged with the AD investigation to examine all the known factors except of the dumped imports which are simultaneously harming Union commerce pursuant to Article 3(7)<sup>35</sup>, it must be held that if the damaging impacts of those different factors are not legitimately isolated and recognized from the harmful impacts of the dumped imports, the institutions will not be in a locus to determine that the injury which they attach to the dumped imports has in fact been caused by the dumped imports, instead of other factors.<sup>36</sup>

Thus, the institutions (without such partition and qualification of the different harmful impacts) would have no objective premise to infer that the imposition of anti-dumping duty (ADD) is justified, as the dumped imports are indeed causing injury. That separation of the injurious effects due to factors other than the

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<sup>33</sup> Ibid, Para 36-37

<sup>34</sup> Ibid, Para 34

<sup>35</sup> Council Regulation (EC) 1225/2009, art 3(7)

<sup>36</sup> Above (n 8) Para 53

dumped imports requires a concrete analysis of the nature and importance of the factors in question. Moreover, that analysis cannot be based on the simple hypothesis that the factors other than the dumped imports do not cause the injury and do not contribute to it.<sup>37</sup>

The Court further held that as regards the distinction established by the Council between, on the one hand, amendments to the legislative framework of the market, and on the other hand market-related developments or conduct, it should be noted that that distinction does not follow either from Article 3.5 of the WTO Agreement<sup>38</sup> or from Article 3(7) of the basic regulation. In any event, the distinction put forward by the Council cannot be deduced either from any common features presented by the known factors expressly listed in those provisions.<sup>39</sup>

In fact, firstly, as is apparent from the very wording of those two provisions, the enumerations of ‘known factors’ other than the dumped imports, contained therein are not exhaustive but, on the contrary, indicative, as is shown by the use of the word ‘include’ introducing the list of factors which may be regarded as relevant.

Secondly, far from establishing a distinction between, on the one hand, amendments to the legislative framework of the market, and on the other hand market-related developments or conduct, the common objective of Article 3.5 of the WTO Agreement and Article 3(7) of the basic regulation is to ensure that the possible negative effects of other factors having an impact on the injury suffered respectively by the Union or national industries, could not be attributed to imports forming the subject-matter of the investigation.

The EU institutions had to consider other known factors during their investigation, in the setting of Article 3(7) the reality of the causal connection between the damage endured by the Union business and the imports from Pakistan of the item

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<sup>37</sup> Ibid

<sup>38</sup> The General Agreement on Tariffs and Trade 1994 (“GATT 1994”) (15<sup>th</sup> April 1994) <[https://www.wto.org/english/docs\\_e/legal\\_e/gatt47\\_e.pdf](https://www.wto.org/english/docs_e/legal_e/gatt47_e.pdf)> accessed 10 June 2015

<sup>39</sup> Ibid, Para 55

concerned, framing the subject matter of the AD inquiry. It follows that the abolition of the previous AD duties and ordinary customs duties under the preferential tariff arrangements were known factors within the meaning of said Article. The obligation arising from that article of its useful effect in circumstances such as those in this case, where the question concerning the effects of amendments to the legislative framework had been clearly raised in the administrative procedure, may be wasted if a contrary conclusion is drawn.<sup>40</sup>

The impact of the two measures referred to above on the causal link amid the imports from Pakistan of the product concerned and the damage sustained by the Union business, and which were the subject-matter of the AD investigation, even though the amended legal regime applied during the greater part of the investigation period. In those circumstances, it must be held that the EU authorities did not effectively conduct the determination of the said causal connection. And the same fact is not denied by the Council itself in its observation. The Court further refers following paragraphs from Case C-358/89 falling in similar circumstances:<sup>41</sup>

Contrary to the arguments put forward by the Council at the hearing, the Court finds that it cannot be presumed, through a mere hypothesis, that the impact of the legislative amendments in question was, in any event, only delayed. And that it did not explain the previous negative trends or that it concerned only a negligible part of the investigation period.<sup>42</sup>

As regards the Council's argument that the ending of the former AD measures were not able to break the causal connection among the imports from Pakistan and the damage endured by the Union business as half the exporting producers in the sample, including the applicant, were not subject to those duties. The Court finds that as to the question whether or not the EU institutions entrusted with the

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<sup>40</sup> Ibid, Para 59

<sup>41</sup> Ibid, Para 60

<sup>42</sup> Ibid, Para 72

investigation failed to fulfil their obligation to examine all the known factors, as per Article 3(7) of the basic regulation such argument is irrelevant.<sup>43</sup>

Finally, it is apparent from recitals 104 to 109 of the contested regulation that, as regards the volume of imports from Pakistan, the share of the Union market held by those imports and the price of the latter, to overall economic indicators and not to data specific to the undertakings in the sample, should be considered while establishing the causal link as provided by Article 3(7) of Council regulation (EC) 384/96.<sup>44</sup>

The EU institutions could not be exonerated from examining the impact of the abolition of those duties on the injury caused to the Union industry, and thus assessing whether or not the causal link had been broken as a result of that measure, by the mere fact that three exporting producers in the sample, including the applicant, had not been subject to the previous AD. Moreover the conclusion that the institutions entrusted with the investigation had not fulfilled all their obligations under Article 3(7) by the mere fact that they have failed to take account, under the heading known factors other than the dumped imports which are concurrently hurting Union commerce, of the elimination of customs barriers of the order of 12% following the introduction in relation to Pakistan of the scheme of generalised tariff preferences.<sup>45</sup>

Finally, concerning the Commission's claim at the hearing that it took account of the amendments to the legislative framework in question in particular when it analysed the CIF values of the products concerned, the Court considers that mere reference to import prices, or more generally to volumes, market shares and prices of imports from Pakistan, are not sufficient to demonstrate that the impacts of the legislative amendments on the Union industry were taken into account by the institutions entrusted with the investigation.<sup>46</sup>

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<sup>43</sup> Ibid, Para 75

<sup>44</sup> Ibid, Para 79

<sup>45</sup> Ibid, Para 81

<sup>46</sup> Ibid, Para 82

Moreover, a necessarily comparative analysis of a series of relevant indicators which vary over time, must be assessed in such a way as to permit a differentiation and distinction between the various potential causes of the alleged injury, while examining the other economic indicators, on which the analysis of the damage suffered by EU business and of the causal link depends.

More particularly, what the damage suffered by Union commerce would have been in the absence of any dumping, that is to say what would have been the injury arising merely from the entry into force of the scheme of generalised tariff preferences and the closure of the former AD measures, are factors which are not apparently analysed by the EU institutions in this case, even in the form of a mere estimate whether in terms of loss of market share, reduction in profitability or performance of the industry referred to above, of renunciation of lower segments of the market or any other relevant economic indicator.<sup>47</sup>

*“The third part of the fifth plea is therefore well founded. Secondly, one cannot exclude the possibility that without the error of law in question, the Council would not have determined the existence of a causal link between the imports forming the subject-matter of the AD procedure and the damage suffered by the Union business, the contested regulation must be annulled in so far as it affects the applicant, without there being any need to examine its other pleas and arguments.”<sup>48</sup>*

### **5.3.3.2 OBITER DICTUM**

However, the Court held that in the first place it should be noted that it is sufficiently clear from the documents in front of the Court that as from the start of the administrative procedure, the associations representative of exporting manufacturers of Pakistani bed linen duly drew the consideration of the EU institutions to the fact that the harm supposedly suffered by the EU industry had, in any event, its origin not in the dumping of products originating in Pakistan, but

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<sup>47</sup> Ibid, Para 84

<sup>48</sup> Ibid, Para 85

in the ending of the foregoing AD measures and ordinary customs duties in the context of the scheme of generalised tariff preferences in favour of Pakistan.<sup>49</sup>

In particular, where Union legislations are intended precisely to implement an international agreement concluded by the Union in that respect, first of all, it should be noted that the Union texts must be interpreted, so far as possible, in the light of international law, as is the case with the basic regulation, which was adopted in order to satisfy the international obligations flowing from the 1994 AD Code.<sup>50</sup>

The EU institutions must, in principle, take into consideration the data concerning the exports of all the undertakings in the sample, where sampling is carried out as per Article 17 of the basic regulation. It follows that in this case, they should have assessed whether, for three of the six undertakings in the sample, there had been, as from 30 January 2002, any effect on prices of the ending of the foregoing AD measures; and if there is any reduction in the export price corresponding to the rate of the previous anti- dumping duties to which they had previously been subject.<sup>51</sup>

That conclusion is, moreover, confirmed by the fact that the evolution of the economic factors presented in the contested regulation shows that the Union market and the Union industry experienced a significant deterioration in its position and that the imports from Pakistan made their greatest progression on the Union market between the end of 2001 and the end of the IP. The possibility that taking account of the effects of the two legislative amendments in question could have had a significant impact on the conclusion of the EU institutions as to the causal link referred to above could not be precluded by anyone.<sup>52</sup>

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<sup>49</sup> Ibid, Para 45

<sup>50</sup> Ibid, Para 54

<sup>51</sup> Ibid, Para 77

<sup>52</sup> Ibid, Para 61



### 5.3.4 COMMENT

Causation analysis requires the investigative bodies to establish a cause and effect relationship between dumped imports and alleged injury caused to the local industry. Establishing a causal link between dumped imports and injury caused to Union industry is central to decision of imposition of ADD. Although apparently it is an easy task but factually it has always been subject to controversy, as no explicit criteria for establishment of such causal link has been provided in laws.<sup>53</sup>

The researcher submits that the list of factors provided in the Article 3(7) is not thorough and comprehensive, instead it is standard. The factors mentioned in the Article are just indicative and exemplary, and it does not mean that factors other than those mentioned in Article 3(7)<sup>54</sup> could not be considered. However, in order to interpret Article 3(7), it is necessary to understand the purpose and objectives for inclusion of this specific provision in the General Agreement on Tariffs and Trade (GATT). It was definitely to conduct a non-attribution analysis, thus segregation of damage caused by dumped imports from damage produced by other known factors.

It was also established in Case C-341/95 and Case C-76/00<sup>55</sup> that the Union legislation should (so far as possible) be interpreted in a manner which is consistent with international law, in particular where its provisions are anticipated precisely to give effect to an international agreement concluded by the Union.<sup>56</sup> However, Dider observed that the EU institutions are now paying more attention to injury caused by ‘other known factors’; their approach was, however, different prior to the adoption of the Uruguay round. Though since the adoption of strengthened policy towards segregation of injurious impact of dumped imports from injury due to other factors, have the institutions found ‘other known factors’

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<sup>53</sup> Dukgeun Ahn and William Moon, ‘Alternative Approach to Causation Analysis in Trade Remedy Investigations: ‘Cost of Production’ Test’ (2010) 44 Journal of World Trade 1023, 1032

<sup>54</sup> Council Regulation (EC) 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Union [2009] OJ L343/51

<sup>55</sup> Case C-76/00 P *Petrotub and Republica* [2003] ECR I-79, Para 55 to 57

<sup>56</sup> Case C-341/95, *Gianni Bettati v Safety Hi-Tech Srl* [1998] ECR I-04355, Para 20

breaking the causal link between dumped imports and injury caused to the Union industry only in a few cases.<sup>57</sup>

In another judgement of Case C-149/96<sup>58</sup> and Case T-192/08<sup>59</sup>, the court set the parameter to judge the legality of the Union institution's actions taken within the context of an international agreement. It ruled that the efficacy of the EU institution's actions will be reviewed by the courts in the light of the WTO Agreement, through which the investigative institutions seek power. In the same way the interpretation of Article 3(7) as done by the EU Council shall be cross-checked against not only the text of Article 3.5 of the WTO Agreement but also the intent and rationale of legislators behind the incorporation of Article 3(7).

Simon Lester discusses three possible options where causation analysis could be considered satisfied. First, if it is established that increased imports are the only cause of injury to the local industry; second, if dumped imports do not solely cause material injury but their contribution to the injury is huge; third, causation test is satisfied, when increased imports analysed in isolation are contributing to the injury caused to local industry.<sup>60</sup>

However, it may be submitted that, the other known factors may be different and versatile depending upon the nature of the dispute and circumstances of each case. Therefore, if one applies literal or mischief rule of interpretation, considering the purpose of the Article, which was to avoid the calculation of injury in a dumping case which instead was due to other known factors, in either case the wording of the Article seems to be inclusive rather than conclusive.

The text of Article 3.5 of the WTO Agreement and Article 3(7) of the EU's basic regulation indicates that the list of other possible causal factors enumerated in that

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<sup>57</sup> Pierre Didier, 'The WTO Anti-Dumping Code and the EC Practice- Issues for Review in Trade Negotiations' (2001) 35 (1) *Journal of World Trade* 35, 45

<sup>58</sup> Case C-149/96, *Portuguese Republic v Council of the European Union* [1999] ECR I-8395, Para 41

<sup>59</sup> Case T-192/08, *Transnational Company 'Kazchrome' AO and ENRC Marketing AG v Council of the European Union* [2011] ECR II-07449, Para 33

<sup>60</sup> Simon Lester *et al.*, *World Trade Law: Text, Materials and Commentary* (2<sup>nd</sup> Edition, Bloomsbury Publishing 2012) 541

provision is illustrative. Thus, while the listed factors in Article 3(7) might be relevant in many cases, and the list contains useful guidance as to the kinds of factors other than imports that might cause damage to the local industry, the specific list in Article 3(7) is not itself mandatory.<sup>61</sup>

Mickus argues that an anti-dumping duty can only be imposed if it is found that Union industry is being injured by these imports. As a common practice, the Commission is found to establish this causal link on two grounds: firstly, drastic increase in foreign imports; and secondly, depreciation of prices of Union industry.<sup>62</sup> Therefore, causation would be established where the Union market is being injured and this injury coincides with increase in imports and reduction of prices.<sup>63</sup>

It is also evident from the WTO Panel report WT/DS122/R where it was held that Article 3.5 therefore mandates the investigating authorities to examine other known factors and gives an illustrative list of such factors. In addition, it mandates the authority not to associate to dumped imports damage produced by such other factors.<sup>64</sup> Similarly, in another report ADP/97,<sup>65</sup> the WTO panel established that the examples of other known factors as given in Article 3.5 of the WTO Agreement must be used as examples. As depending upon the complexity of the economic and commercial issues involved in each investigation it was not possible for the legislators to give an exhaustive list of other known factors.

However Prost *et al.* contend that on a larger scale, the Panel and the appellate tribunal has not sufficiently determined the methodology used by the national investigative bodies to establish a causal link. However, while reviewing the

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<sup>61</sup> Above (n 8)

<sup>62</sup> Arturas Mickus, 'Shortcomings of EU Anti-Dumping Law and Policy' (2002) 4(4) European Journal of Law Reform 525, 565

<sup>63</sup> Edwin Vermulst, *EC Anti-Dumping Law and Practice* (Sweet and Maxwell 1996) 314

<sup>64</sup> WT/DS122/R Appellate Body Report, Thailand – Anti-Dumping Duties on Angles, Shapes and Sections of Iron and Non-Alloy Steel and H-Beams from Poland (adopted on 12<sup>th</sup> March 2001) Para 7.274 <[https://www.wto.org/english/tratop\\_e/dispu\\_e/122abr\\_e.pdf](https://www.wto.org/english/tratop_e/dispu_e/122abr_e.pdf)> accessed 15 August 2016

<sup>65</sup> ADP/97, WTO Panel Report, United States – Imposition of Anti-Dumping Duties on Imports of Fresh and Chilled Atlantic Salmon from Norway (adopted on 27<sup>th</sup> April 1994), Para 550 <[https://www.wto.org/english/tratop\\_e/dispu\\_e/91saladp.pdf](https://www.wto.org/english/tratop_e/dispu_e/91saladp.pdf)> accessed 15 August 2016

determinations of the national investigative bodies they have revealed two standards: (i) coincidence in time and correlation standards; and (ii) condition of competition slandered.<sup>66</sup>

Article 3.5 of the WTO Agreement quoted a few examples of other known factors, and the rest is left up to the investigative bodies to analyse the injury caused by all differing and possible other factors affecting the local industry. The wide discretion available to the Commission in injury determination is automatically extended to causation analysis. However, the researcher suggests that the discretion given by Article 3.5 of GATT should not be misinterpreted by the signatories of the Agreement and should not lead to a conclusion that it is up to the national investigating bodies to adjudicate which factors need to be considered and which do not need to be examined. It may further be asserted that the rationale of Article 3.5 of the WTO Agreement and Article 3(7) of the basic regulation should not be overridden by the grant of discretion to investigation institutes.

Another problem associated with causal link analysis is the precise calculation of injury caused by dumped imports and injury caused by ‘other known factors’, where both factors are causing injury simultaneously. In the *Upland Cotton* case, the Appellate Body established that although ‘other known factors’ may have been causing price suppression, the injury originating from these factors cannot break the genuine causal link between the United States’ significant price contingent-subsidies and significant price cutting.<sup>67</sup> Sapir *et al.* are mostly satisfied with the AB’s findings about causation analysis they found that the AB should have provided more specific information about non-attribution analysis.<sup>68</sup>

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<sup>66</sup> Prost and Berthelot, ‘Article 4SA’ in Rudiger Wolfrum *et al.* (eds), *4 WTO – Trade Remedies* (Martinus Nijhoff Publishers 2008) 311

<sup>67</sup> WT/DS267/AB/R, Appellate Body Report, United States - Subsidies on Upland Cotton, (Adopted March 21, 2005) [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_status\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm) Accessed 30<sup>th</sup> June 2016

<sup>68</sup> Andre Sapir and Joel Trachtman, ‘Subsidisation, price suppression, and expertise: causation and precision in Upland Cotton’ (2008) 7 (1) World Trade Review 183, 201

It is further submitted that the nature of the list of other known factors provided in Article 3(7) is exemplary and suggestive. However, some judges in their judgement (or parties in their arguments) claimed that due to the complex economic and commercial calculations involved in AD cases, the legislators grant wide discretion to the investigative agencies to decide the *relevance* of other known factors as per the changing circumstances of each case; the same was held in Case T-462/04,<sup>69</sup> Case T-385/11<sup>70</sup> and case T-633/11<sup>71</sup>.

Prost *et al.* argued that non-attribution analysis and establishment of a causal link between dumped imports and material injury caused to Union industry is a difficult and complicated practice, which tend to exert extra burden on investigative bodies. The insufficient separation between dumped imports and injury has been a common reason for inconsistency of the adopted regulations with the WTO Agreement.<sup>72</sup> However, this thesis contends that AD measures adopted by the national investigative bodies are not controversial due to lack of competence of the institutions or complexity of the causation analysis. Instead this is due to the profound arbitrary decisions drawn by the investigative agencies caused by ambiguous wording of the applicable provisions of international and national AD frameworks.

Although it is established that it was impossible for legislators to include an exhaustive list of other known factors in Article 3(7) of the basic regulation, it seems to be unjust to establish the preference of the Literal rule over the Mischief rule of interpretation of Article 3(7). However, it is crystal clear that the rationale of Article 3(7) is to restrict the protection of local industry beyond what is necessary.

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<sup>69</sup> Case T-462/04, *HEG Ltd and Graphite India Ltd v Council of the European Union* [2008] ECR II-03685, Para 68

<sup>70</sup> Case T 385/11, *BP Products North America Inc. v Council of the European Union* [2014] OJ C 282, Para 92

<sup>71</sup> Case T 633/11, *Guangdong Kito Ceramics Co. Ltd, Council of the European Union* [2014] OJ C 32, Para 41

<sup>72</sup> Prost and Berthelot, 'Article 4SA' in Rudiger Wolfrum *et al.* (eds), *4 WTO –Trade Remedies* (Martinus Nijhoff Publishers 2008) 297

In order for this obligation to be caused, Article 3.5 requires that the factor at issue:

- (a) Be 'known' to the investigating authority;
- (b) Be a factor 'other than dumped imports'; and
- (c) Be harming the local commerce at the same time as the dumped imports.

This thesis establishes that in order to maintain the inclusion or exclusion of any injurious factor within the meaning of other known factors, all three above-mentioned conditions must be met. If any of them could not be established, then such factor may not be considered as other known factor. For example if a factor is known and separate from dumped imports but it is not causing injury, then it is not another known factor.

Similarly, if a factor is separate from dumped imports and it is also causing injury but it is not known to the investigative agencies, then it failed the test of other known factors. In the same way if such a factor is known and causing injury to the local market but is not separate from the dumped imports, in that case as well it is not able to be considered.

Keeping in view the above-mentioned pre requisites of application of Article 3(7) of the Regulation, if one analyses the current case, one must admit that the subject matter of this case fulfils all terms and conditions to be considered as other known factors, as the legislative amendments and grant of preferential tariff arrangements by the EU institutions was a factor known to the EU institutions. And in the author's opinion, these legislative amendments were a separate factor from dumped imports.

But the other school of thought opines that the effect of legislative amendments was not on the EU market but on the dumped imports themselves. Thus the injury suffered by the EU is not due to the amendments but to the dumped imports

themselves.<sup>73</sup> However, in the writer's opinion the legislative amendments and grant of special tariff arrangements was a known, separate factor causing injury to the EU market. Hence, it should be interpreted and included within the meaning of other known factors as described by Article 3(7) of the Regulation.

Additionally, the author suggests that as held by the EU Court in Case T-299/05<sup>74</sup> the basic purpose of adoption of AD laws and the imposition of AD duties, has been to restrict unfair trade and practices while ensuring a fair comparison among NV and EP considering all those factors affecting price the comparability. Therefore, if the Council's argument is accepted that the origin of injury is in dumped imports instead of legislative amendments, then the question may arise why the EU institutions adopted regulations which provide for concessional arrangements for developing countries and ultimately result in the form of material injury to the Union industry? Meanwhile the consequences of lifting previous AD duties and the grant of preferential tariff arrangements to Pakistan were already known: that ultimately it will result in the form of benefit to Pakistani exporters in terms of their cost of production.

Similarly, Article 15 of 'SCM'<sup>75</sup> requires the segregation of injurious effects caused by subsidised imports from injury caused due to subsidy. In a dispute between Korea and Japan about 'countervailing measures on dynamic access memories from Korea', the Appellate Body disagreed with Korea's argument that injurious effects should be segregated, and thus upheld the Panel's findings.<sup>76</sup> The AB concluded that it would imply an additional burden on investigative bodies: first, to inquire the purpose of subsidy as granted by the exporting country; and secondly, to evaluate whether in the absence of subsidy the exports would have

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<sup>73</sup> Case C-638/11, *Council of the European Union v Gul Ahmed Textile Mills Ltd* [2013], Opinion of AG Sharpston, Para 55

<sup>74</sup> Case T-299/05, *Shanghai Excell M&E Enterprise Co. Ltd and Shanghai Adeptech Precision Co. Ltd v Council of the European Union* [2009] ECR II-00565, Para 241

<sup>75</sup> Agreement on Subsidies and Countervailing Measures

<sup>76</sup> WT/DS336/R, Panel Report, Japan - Countervailing Duties on Dynamic Random Access Memories from Korea, (adopted 17 December 2007)

<[https://www.wto.org/english/tratop\\_e/dispu\\_e/379abr\\_e.pdf](https://www.wto.org/english/tratop_e/dispu_e/379abr_e.pdf)> accessed 10 September 2016

been in the same volume or at the same prices. However, Article 15 does not require two inquiries.<sup>77</sup>

Crowley and Palmeter argue that the AB's conclusion would weaken the causation test between subsidies and countervailing measures as required by Article 15. It would render protection beyond necessity to the local industry. The AB has not interpreted Article 15 within its whole context and ignoring its purpose. The AB's contention that the Korean argument offers two additional tests to be carried out by the investigative bodies is not substantial. It overlooks the way in which burden of proof moves during legal proceedings.<sup>78</sup>

In Case T-410/06<sup>79</sup> and Case T-138/02<sup>80</sup> the General Court held that it must first be pointed out that the adoption of AD duties is not a penalty for earlier behaviour but a protective and preventive measure against unfair competition resulting from dumping practices. In order to be able to determine the AD duties appropriate for protecting the Union industry against dumping, it is therefore necessary to carry out the investigation on the basis of information which is as recent as possible.

It seems to be a sweeping statement by the Council that even if legislative amendments could be regarded as other known factors, even then they could not break the causal relationship. The author is not sure on what basis the Council can claim this. However, it is suggested that, if the Union market has suffered materially due to exports from Pakistan, and injury margin is increased after the withdrawal of previous AD duties on Pakistan and grant of generalised tariff preferences to Pakistan, then there would be sufficient reasons to believe that the causal link may have been broken. At least it would require deep analysis of the facts to reach a conclusion about what percentage of material injury originated from legislative amendments and how much originated from the dumped imports.

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<sup>77</sup> WT/DS336/AB/R, Appellate Body Report, Japan - Countervailing Duties on Dynamic Random Access Memories from Korea, (adopted 17 December 2007)

<[https://www.wto.org/english/tratop\\_e/dispu\\_e/336abr\\_conc\\_e.pdf](https://www.wto.org/english/tratop_e/dispu_e/336abr_conc_e.pdf)> accessed 10 September 2016

<sup>78</sup> Meredith Crowley and David Palmeter, 'Japan - Countervailing Duties on Dynamic Random Access Memories from Korea' (2009) 8 (1) World Trade Review 259, 263

<sup>79</sup> Case T-410/06, *Foshan City Nanhai Golden Step Industrial Co. Ltd v Council of the European Union* [2014] ECR II-00879, Para 133

<sup>80</sup> Case T-138/02 *Nanjing Metalink v Council* [2006] ECR II-4347, Para 60



The investigative bodies are required to state explicit, unambiguous and reasoned explanation about causation analysis. In this regard, the investigative bodies should conduct a proper economic analysis. Similarly, the Panel in the *US-Steel* established that a thorough quantitative analysis is required for adequate non-attribution analysis. However, it is maintained that specific economic or quantitative model is the discretion of national investigative agencies.<sup>81</sup>

Vermulst noted that only a few ‘other known factors’ have been able to break the causal link between dumped imports and injury caused to Union industry. These factors include: *de minimis* dumping margin; *de minimis* market share of the dumped imports; *de minimis* injury margin; and lack of interest of Union industry.<sup>82</sup> However, the current case is unique in its nature, as admissibility of legislative amendments under the scope of Article 3(7) has not been argued before. Also, there is a dearth of legal literature on this specific point.

Moreover, the investigation period includes three months when previous AD duties were in place. The two-year investigation period also includes almost nine months when Pakistani exports were benefiting from the EU’s preferential tariff arrangements approved for Pakistan. Therefore, it is evident that the two principal policy changes in the EU’s trade policy relating to Pakistan in the form of removal of previous AD duty and approval of GSP status for Pakistani imports also emerged in the overall calculation of normal value, and export price etc. through the investigation period. As a matter of fact, however, the period through which Pakistani industry benefited by removal of duties and grant of GSP status should not be part of the investigation period.

It is submitted that it is right to say that the applicant, i.e. Gul Ahmed, was not subject to the AD duties levied by the previous regulation, hence it should not affect applicants’ exports. But as a matter of fact another factor, i.e. grant of

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<sup>81</sup> Miranda, Jorge, ‘Causal Link and Non-attribution as Interpreted in WTO Trade Remedy Disputes’ (2010) 44 (4) *Journal of World Trade* 729, 745

<sup>82</sup> Edwin Vermulst, *EU Anti-dumping Law and Practice* (2<sup>nd</sup> edition, Sweet & Maxwell 2010) 446; Wolfgang Muller, Nicholas Khan and Tibor Scharf, *EC and WTO Anti-Dumping Law: A Handbook* (2<sup>nd</sup> Edition, Oxford University Press 2009) 313

preferential tariff arrangements, is also under consideration, which definitely benefited Pakistani exports, including the exports of Gul Ahmed. Resultantly, their cost of production decreased due to the reduction of duty and concessional arrangements for developing countries like Pakistan.

However, it is submitted that it is challenging to recognise how come EU producers can submit in the Court that origin of injury caused to the Union is in the legislative amendments and grant of special tariff arrangements to Pakistan; while on the other hand it was Eurocoton itself that launched the complaint of dumped imports from Pakistan. If such statement of association representing Pakistan is right and well-founded, then it may cause serious questions regarding the validity of issues.

Thus case decided in favour of Gul Ahmed against the Council; however, the Council went for appeal in the Court of Justice, where the judgement of the general Court was overturned. The Court of Justice does not agree with the General Court in terms of its interpretation of causal link and other known factors as per Article 3(7) of the basic Regulation. It further ruled that legislative amendments cannot be considered as other known factors under the meaning of Article 3(7) of the basic Regulation.<sup>83</sup>

## **5.4 APPEAL IN FRONT OF THE EU COURT OF JUSTICE CASE C-638/11**

### **5.4.1 ARGUMENTS OF THE PARTIES**

#### **5.4.1.1 COUNCIL'S ARGUMENTS**

The Council submits that by misconstruing the concept of 'other factors' provided for in that provision, the General Court infringed Article 3(7) of Regulation No 384/96. The Council further states that the General Court correctly found that Article 3(7) requires, in principle the injury caused by the dumped imports to be detached and distinguished from the damaging effects of other known factors. However, while concluding that the two factors at issue, namely the

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<sup>83</sup> Case C-638/11, *Council of the European Union v Gul Ahmed Textile Mills Ltd* [2013] OJ C 65

implementation of the GSP+ scheme and the elimination of the earlier AD duties, constituted other factors inside the significance of Article 3(7) of basic regulation, the General Court made a manifest error of interpretation.<sup>84</sup>

The Council contends that under the meaning of Article 3(7), other known factor is that which is unrelated to the dumped imports. However, the two factors in this case are directly related to dumped imports from Pakistan. As any injury that results from an increase of the dumped imports is caused by the dumped imports, not by the factors facilitating the increase in dumped imports, therefore a factor that merely facilitates an increase in the dumped imports is not itself a separate factor causing injury.<sup>85</sup> The same interpretation was made by the WTO report on 28 October 2011 titled: 'European Union - AD Measures on Certain Footwear from China' (WT/DS405/R).<sup>86</sup>

The Council further plead that although the list of other known factors provided in Article 3(7) is not exhaustive, legislative amendments could not be considered within the meaning of the said Article. It could be included within the meaning of other known factors only if directly affected the EU market. But in this case the two factors can only have an effect on the dumped imports itself.<sup>87</sup>

#### **5.4.1.2 GUL AHMED'S ARGUMENTS**

Gul Ahmed argues that there is no basis for an arbitrary limitation of the factors whose injurious effects are to be taken into account, as the objective of Article 3(7) is to ensure that no injury is to be attributed to dumped imports that results from another cause. The Council is invalidly restricting the scope and meaning of Article 3(7), which aims to consider all other known factors except dumped

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<sup>84</sup> Ibid, Para 14

<sup>85</sup> Ibid, Para 15

<sup>86</sup> WT/DS405/R, 'WTO Panel Report, European Union anti-dumping measures on certain footwear from China (adopted on 28<sup>th</sup> October 2011)  
[https://www.wto.org/english/tratop\\_e/dispu\\_e/405r\\_e.pdf](https://www.wto.org/english/tratop_e/dispu_e/405r_e.pdf)

<sup>87</sup> Above (n 83) Para 16

imports causing injury to the market. There is no basis for an arbitrary limitation of the factors whose injurious effects are to be taken into account.<sup>88</sup>

The European Union's correction of the invalid imposition of measures in 1997 was reflected by the removal of the previous AD duties, and had nothing to do with dumped imports, whether during the investigation period or before. The grant of special tariff arrangements as from 1 January 2002 to Pakistan was not only in respect of bed linen imports. The amendments to the legislative framework of the market were not 'intimately related' to actions of third country producers but due to the action of the European Union. Gul Ahmed Textile Mills maintains that the factors at issue directly affected the price levels of those imports on the European Union market by reducing the duty burden on all bed linen imports from Pakistan. To characterise these tariff changes as 'only facilitating an increase in the volume of dumped imports' is manifestly inaccurate.<sup>89</sup>

Gul Ahmed further states that the EU producers were suddenly facing imports which entered the EU market at a price level very substantially lower than what they had been previously. And it was a direct result of the factors at issue, without any change to the prices of the Pakistani producers. Therefore the economic circumstances considered in the determination of injury and of causation between that injury and dumping, were directly affected by changes to the legislative framework.<sup>90</sup> The Court therefore, held as follows.

#### **5.4.2 JUDGEMENTS OF THE EU COURT OF JUSTICE CASE C-638/11**

In assessing the causal link between the dumped imports and the injury sustained by the Union business, it is not disputed that the EU institutions did not examine the two measures in question, that is the abolition of the ordinary customs duties under the scheme of generalised tariff preferences and the abolition of the

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<sup>88</sup> Ibid, Para 19

<sup>89</sup> Ibid, Para 20

<sup>90</sup> Ibid, Para 22

previous AD duties. It is clear that the abolition of import duties of, first, 12% and, second, 6.7%, could have had the effect of facilitating and promoting the imports of the products concerned. However, the effect was on the dumped imports themselves.<sup>91</sup>

While establishing the scope of Article 3(7) of the Regulation, the Court held that only those factors could be interpreted within the scope of other known factors, which are directly causing injury to market. Therefore, the measures at issue cannot be regarded as ‘other factors’ within the meaning of Article 3(7) of Regulation No 384/96<sup>92</sup>, as they are facilitating and promoting imports only indirectly.<sup>93</sup> However, the Court submits that in the present case, the changes to the legislative conditions under which the dumped imports take place cannot be regarded, as such, as causing injury. It is the imports themselves which are causing injury. The dumped imports and the legislative conditions under which they take place are inseparable.

That interpretation is consistent with the report of the WTO Panel of 28 October 2011, titled: ‘European Union - AD Measures on Certain Footwear from China’, which examined the issue of the causal link between the lifting of an import quota and injury in the light of Article 3.5 of the 1994 AD Code. At point 7.527 of that report, it was found that the lifting of an import quota, which allows for an increase in the volume of dumped imports, is not itself a factor causing injury.<sup>94</sup> In those circumstances, the General Court erred in law in holding that the two factors at issue constitute ‘other factors’ within the significance of Article 3(7) of basic regulation.<sup>95</sup>

## **5.5 OPINION OF THE ADVOCATE GENERAL**

However, it is worth considering the opinion of the Advocate General. This was delivered by Advocate General Sharpston on 25 April 2013. Sharpston took the

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<sup>91</sup> Ibid, Para 25-27

<sup>92</sup> Council Regulation (EC) No 384/96 of 22 December 1995 on protection against dumped imports from countries not members of the European Union [1995] OJ L 56

<sup>93</sup> Above (n 83) Para 28

<sup>94</sup> Above (n 86), Para 7.527

<sup>95</sup> Above (n 83) Para 31-32

view that whether a duty on imports is higher or lower, it can have no adverse effect whatever on the domestic industry concerned unless goods are actually imported. The same is true of a removal or reduction of duty. There can be no situation in which the removal of a duty on imports can cause material injury to the domestic industry in the absence of imports. Whatever effect it has is inextricably bound up with the effect of the imports whose price it influences, whether those imports are dumped or not. Where the effects of all known dumped or un-dumped imports are examined, then the effect of any application or removal of duty influencing the price of those imports has also been examined.<sup>96</sup>

In the present case, the institutions examined the imports from Pakistan, which, they concluded, were all dumped. That conclusion must be assumed to be correct, for the purposes of this appeal. They examined also the effects of subsidised imports from India, imports by the Union industry and imports from third countries other than India and Pakistan. Gul Ahmed has not alleged that the effects of any other imports should have been examined. It seemed to the Advocate General, therefore, that there was no possible scope for the institutions to examine the removal of the previous duties independently, as a possible separate factor which was at the same time injuring the Union industry.<sup>97</sup>

Sharpston further took the view that an AD duty is not a sanction designed to punish a dumping exporter for his behaviour. It is rather a mechanism designed to redress, as nearly as possible, an imbalance considered unfair to the domestic industry. Viewed in that light, the fact that a removal of previous duties is unrelated to the conduct of any dumping exporter can be seen as of no relevance when deciding whether its effects should be separated and distinguished from those of the dumped imports.<sup>98</sup>

Finally, in the present case, the removal of the previous duties affected the price not only of the dumped imports but also of other imports that were not dumped.

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<sup>96</sup> Case C-638/11, *Council of the European Union v Gul Ahmed Textile Mills Ltd* [2013], Opinion of AG Sharpston, Para 55

<sup>97</sup> *Ibid*, Para 56

<sup>98</sup> *Ibid*, Para 60

The dumped imports were found to cause injury. The others were not. She thus reached the view that the General Court erred in considering that the removal of the previous duties should have been examined as a separate factor other than the dumped imports in the context of Article 3(7) of the basic regulation.<sup>99</sup>

To conclude, it could be said that according to the Advocate General, only those ‘other known factors’ are necessary to be examined and separated from the injury caused by the dumped imports, which are inflicting direct damage to the Union industry. Therefore, the impact of removal of previously imposed AD duty is on the dumped imports themselves instead of the Union industry. The Advocate General’s arguments are evaluated in the next section.

## 5.6 COMMENT

The Commission is duty bound to analyse the injurious impact of ‘other known factors’. However, the Commission acquired wide discretion about it, as the phrase ‘other known factors’ attracts multiple interpretations.<sup>100</sup> The burden of proof is on parties concerned to prove that other factors apart from dumped imports are also causing injury to local industry.<sup>101</sup> The author suggests that the lists of other known factors as provided by Article 3(7) of the basic Regulation and Article 3(6) of GATT Agreement are as vague and general as to have only a guiding and exemplary impact. It does not mean that factors other than those mentioned in those lists cannot be considered. After setting the principal forms of other known factors, the applicable legislations left it upon the concerned institutions of the States’ which factors come within the scope of Article 3(7).

The EU institutions’ practices reveal that in the majority of cases, the concerned parties’ arguments about breaking the causal link between dumped imports and injury due to ‘other known factors’ has been rejected. Some of the key examples where these factors were not considered within the scope of ‘other known factors’ are as follows: Community producers’ self-inflicted injury by importing from the

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<sup>99</sup> Ibid, Para 61-62

<sup>100</sup> Arturas Mickus, ‘Shortcomings of EU Anti-Dumping Law and Policy’ (2002) 4(4) European Journal of Law Reform 525, 566

<sup>101</sup> Case T-164/94, *Ferchimex SA v Council of the European Union* [1995] ECR II-2681, Para 49

countries concerned; injury originated from inefficiency of Union producers; the Union market suffered due to an increase in labour costs; market growth is misjudged by Union industry and they invested at the wrong time.<sup>102</sup>

Some other examples include: the injury was caused by non-cooperating Union producers who were selling at lower prices; Union industry suffered due to an increase in raw material cost; the injury originates from fluctuation of exchange rates; the Union industry suffered due to competition among Union producers; the injury is caused by weak export performance of the Union industry.<sup>103</sup> The grant of preferential arrangements and withdrawal of previous ADDs can also be added to the list of factors which were not considered inside the scope of Article 3(7).

*“Damages produced by other factors should not be credited to the dumped imports. In determining the injury, the institutions are thus under an obligation to consider whether the injury actually derived from dumped imports and must disregard any injury deriving from other factors, in particular from the conduct of Union producers themselves.”*<sup>104</sup>

However, as far as the Council’s interpretation is concerned, that only those other known factors are obliged to be considered which directly affect the Union market, therefore as the legislative amendments are indirectly affecting the Union, thus it is not necessary to be considered. Otherwise Article 3(7) of the basic Regulation does not draw any distinction between other known factors directly affecting local market and other known factors indirectly affecting the Union market. It just states as follows:

Known factors other than the dumped imports injuring the Union industry contemporarily shall also be inspected to confirm that injury instigated by these

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<sup>102</sup> Edwin Vermulst, *EU Anti-dumping Law and Practice* (2<sup>nd</sup> edition, Sweet & Maxwell 2010) 448; Van Bael and Ballis, *EU Anti-Dumping and other Trade Defence Instruments* (5th Edition, Kluwer Law International 2011) 331

<sup>103</sup> Van Bael and Ballis, *EU Anti-Dumping and other Trade Defence Instruments* (5th Edition, Kluwer Law International 2011) 342; Wolfgang Muller, Nicholas Khan and Tibor Scharf, *EC and WTO Anti-Dumping Law: A Handbook* (2<sup>nd</sup> Edition, Oxford University Press 2009) 315

<sup>104</sup> Case C-358/89, *Extramet Industrie SA v Council of the European Communities* [1991] ECR I-03813, Para 13-18



other factors is not credited to the dumped imports. Moreover, if one goes beyond the objective behind the said provision, such classification of directly affecting and indirectly affecting other known factors does not get any basis from Article 3(7) of Regulation (EC) 1225/2009<sup>105</sup>.

Additionally, in Case T-190/08<sup>106</sup> and Case C-13/12,<sup>107</sup> the EU Courts held that the analysis of causation does not necessarily have to be carried out at the level of the Union industry as a whole, with no possibility of taking into consideration injury caused to a single Union producer by a factor other than the dumped imports.<sup>108</sup> The honourable Court in this case established the significance of non-attribution analysis, that if only a single Union manufacturer's production is being affected by other known factor, it is required to be segregated from the injury caused by the alleged dumped imports. The rationale of Article 3(7) of the basic regulation is to stop investigative bodies from penalising foreign exporters for wrongs they have never committed.

Article 3(7) of the basic regulation does not state that that examination must take account only of injury caused by the other factors to the Union industry as a whole. In the light of the purpose of that provision, which is to ensure that the institutions separate and distinguish the injurious effects of the dumped imports from those of the other factors, it is possible that in certain circumstances, injury caused individually to a Union producer by a factor other than the dumped imports must be taken into consideration, where it has contributed to the injury observed in relation to the Union industry as a whole.<sup>109</sup>

While criticising the role of the EU Commission based on a case study, Hindley shows quite clearly that EC AD is still a problem. The Commission's arguments

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<sup>105</sup> Council Regulation (EC) 1225/2009 of 30 November 2009 on protection against dumped imports from countries not members of the European Union [2009] OJ L343/51

<sup>106</sup> Case T-190/08, *Chelyabinsk electrometallurgical integrated plant OAO (CHEMK) and Kuznekie ferrosplavy OAO (KF) v Council of the European Union* [2011] ECR II-07359, para 172

<sup>107</sup> Case C-13/12, *Chelyabinsk electrometallurgical integrated plant OAO (CHEMK) and Kuznekie ferrosplavy OAO v Council of the European Union* [2013] OJ C 65, Para 59-60

<sup>108</sup> Case T-190/08, *Chelyabinsk electrometallurgical integrated plant OAO (CHEMK) and Kuznekie ferrosplavy OAO v Council of the European Union* [2011] ECR II-07359, Para 172

<sup>109</sup> Above (n 66)

about what has caused injury are still inconsistent, and it still employs biased methods of calculation.<sup>110</sup>

However, in the author's opinion, there is a cause-and-effect relationship between legislative amendments and alleged dumping. If the EU Council had not withdrawn its previous AD duties imposed on Pakistan and had not granted preferential tariff arrangements to Pakistan, then definitely the export magnitude from Pakistan to EU had not been increased. Thus the Union market would not have suffered material injury. Both factors are inter-related and inter-dependent, therefore this dissertation suggests that it would be appropriate to analyse any of the above-mentioned factors separately while focusing on one and ignoring the other altogether.

In case T-410/06, the General Court held that where after the lapse of quantitative restrictions, the Commission finds an increase in the imports which have been subject to quantitative restrictions before. The Commission may take account of this element while assessing the injury caused to the domestic industry.<sup>111</sup> In another Case C-535/06<sup>112</sup> it was adjudicated that, , known factors other than the subsidised imports are also to be examined in order to confirm that damage produced by those other factors is not accredited to those imports. Thus, the objective of that rule is to avoid granting the Union industry protection beyond that which is necessary".<sup>113</sup>

Likewise, the EU institutions (Commission and Council) were familiar with the effect of the withdrawal of previous AD duties and grant of preferential treatment to Pakistan: that it will result in increase in export magnitude from Pakistan, and thus it may exert pressure on local manufacturers in terms of price competition and cause material injury to the Union. In other words the alleged dumping was

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<sup>110</sup> Brian Hindley, 'EC Anti-Dumping: Has the Problem Gone Away?' (1997) <<http://www.patrickminford.net/artpad.pdf>> accessed 15 January 2015

<sup>111</sup> Case T-410/06, *Foshan City Nanhai Golden Step Industrial v Council* [2010] ECR II-0000, Para 133-135

<sup>112</sup> Above (n 8), Para 57

<sup>113</sup> Case C-535/06, *Moser Baer India Ltd v Council of the European Union* [2009] ECR I-07051, Para 90

foreseen by EU institutions while making legislative amendments in their laws. Hence, as the consequences were foreseen and predetermined, so it was better they did not grant preferential tariff arrangements to Pakistan in the first place.

Although in Case T-58/99<sup>114</sup> and Case T-633/11<sup>115</sup> the General Court held that the question whether a Union industry has suffered injury, and if so whether that injury is attributable to dumped or subsidised imports, involves the assessment of complex economic matters in respect of which the institutions enjoy a wide discretion. However, it may be submitted that there must be a mechanism to check whether institutions are using their discretionary powers fairly and consistently, as absolute power corrupts absolutely.

Schueren concluded that, although, current AD framework provides detailed procedural descriptions, but still it remains vague in some areas instead it creates ambiguity in some new areas too. These unclear provisions led the investigative institutions to conclude questionable conclusions.<sup>116</sup> There must be judicial review of any such assessment to ascertain whether the procedural rules have been complied with, and whether there has been any manifest error of assessment of the facts, or any misuse of powers.

Judicial review and scope of the discretionary powers of the Council and Commission are to be considered as part of the principles of institutional balance. The competence of the other institutions in a specific subject matter should be recognised while exercising the judicial review.<sup>117</sup> Advocate General Tizzano is of the view that assessment of the competent authorities (institutionally responsible for that purpose) should not be substituted with the assessments made

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<sup>114</sup> Case T-58/99, *Mukand Ltd. V Council of the European Union* [2001] ECR II-02521, Para 38

<sup>115</sup> Case T 633/11, *Guangdong Kito Ceramics Co. Ltd, Council of the European Union* [2014] OJ C 32, Para 41; Van Bael and Ballis, *EU Anti-Dumping and other Trade Defence Instruments* (5th Edition, Kluwer Law International 2011) 334

<sup>116</sup> Paulette Schuern, 'New Anti-Dumping Rules and Practice: Wide Discretion Held on a Tight Leash' (1996) 33 *Common Market Law Review* 271, 271

<sup>117</sup> Alexander Fritzsche, 'Discretion, Scope of Judicial Review and Institutional Balance in European Law' (2010) 47 (2) *Common Market Law Review* 361, 387; Van Woude, 'The Court of First Instance: The First Three Years' (1993) 16 (2) *Fordham Intl. L.J.* 412, 459

by the courts. The rule of separation of power does not allow courts to substitute the findings of the Commission.<sup>118</sup>

This thesis, however, contends that, with reference to active judicial review, the concerns about substitution of powers by the courts are excessive. Under active judicial review, the courts are only expected to assess whether the investigative authorities are acting upon the letter and spirit of the basic regulation. Is there any profound breach of right of any interested party? Instead of interpretation of the ambiguous provisions of the basic regulation by the Commission, judicial review renders an opportunity to get the interpretation made by the courts, which are more competent to do it. It also provides an opportunity to get it verified, and to acquire a second opinion upon interpretations of ambiguous parts of law, as made by the institutions.

In the *Tetra Laval*<sup>119</sup> case the Court of Justice stated that as it recognises the discretionary powers of the Commission, however it does not mean that the General Court should refrain from reviewing the Commission's findings. The Union courts should not only assess the validity and consistency of the facts relied upon by the Commission; they should also check whether the evidence relied upon contains sufficient and reliable information in order to assess complex economic situations, and whether it is capable of substantiating the conclusions drawn from it.<sup>120</sup>

Cooke maintains that connecting the judicial review with the use of discretionary powers, and discretionary powers with the legal principle of institutional balance, means in consequence that judicial review should be discussed within legal discourse. He does not agree with some other researchers' pragmatic approach to

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<sup>118</sup> Case C-12/03 *European Commission v. Tetra Laval BV* [2010] ECR I-00067, Opinion of Advocate General Tizzano, Para 86-89

<sup>119</sup> Case C-12/03 *European Commission v. Tetra Laval BV* [2010] ECR I-00067, Para 39

<sup>120</sup> Above (n 78); Panos Koutrakos, *Modern Studies in European Law: EU International Relations Law* (2<sup>nd</sup> Edition, Hart publishing 2015) 367

judicial review, who consider that it should be adapted as the judges see fit in each case.<sup>121</sup>

Be Vesterdorf (the former President of the CFI) has suggested the appropriate standards and nature of judicial review, and according to his standard it should be 'extensive and intense'. The General Court should check whether the Commission has disregarded, miscalculated or inflated the relevant economic data; adopted an erroneous approach to relevant facts; or drawn unconvincing conclusions on the basis of incomplete facts. In the absence of such errors, the court should uphold the findings and conclusion of the Commission.<sup>122</sup>

Furthermore Brosmann *et al.* argue that the Commission's discretionary powers are not unlimited; instead they are subject to the appraisal of certain paradigms in this case the basic regulation. More confined and tightly structured are the legal requirements, e.g. about construction of normal value, export price or calculation of dumping margin; more limited are the arbitrary powers of the Commission. As far as limitation of judicial review of administrative actions is concerned, the courts should not intervene as such, but they should cross check the appropriate application of legal requirements by authorities.<sup>123</sup>

Additionally, referring to the fair use of its discretionary powers by the Council in another judgement of Case T-107/04,<sup>124</sup> the General Court held that notwithstanding the wide discretion it has when determining, in the context of an AD proceeding, the existence of a causal link between the dumped imports and the material injury allegedly suffered by the Union industry, the Council will infringe the basic AD Regulation No 384/96, and more particularly Article 3(3),

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<sup>121</sup> Cooke, 'Changing Responsibilities and Relationships for Community and National Courts: The Implications of the White Paper' in *The Modernisation of the European competition Law: The Next Ten Years* (Cambridge 1999) 61

<sup>122</sup> Judge Bo Vesterdorf, 'Certain Reflections in Recent Judgments Reviewing Commission Merger Control Decisions' in Mark Hoskins and William Robinson, *A True European: Essays for Judge David Edward* (Hart Oxford 2003) 143

<sup>123</sup> Barbara Nastoll, 'EU Anti-Dumping Law, imports from China and treatment of non-market economy countries: Brosmann, Grunwald and Zhejiang Xinan' (2013) 50 (1) *Common Market Law Review* 265, 275

<sup>124</sup> Case T-107/04, *Aluminium Silicon Mill products v Council of the European Union* [2007] ECR II-0669, Para 43

(6) and (7) thereof, if it commits manifest errors of assessment by failing to take into consideration the necessary impact first, of the contraction in demand on the Union industry's sales volume; and second, of the increase in its market share and its sales volume on the level of its prices.<sup>125</sup>

The General Court has thus reaffirmed the argument that Article 3(7) of the basic regulation requires investigative bodies to separate the injury caused by every possible known other factor from alleged injury caused by dumped imports. It does not matter if it is the amendment in the regulatory framework or the conduct of the Union market, as Article 3(7) does not draw any such distinction.

Bael *et al.* found that analysis of injurious impact caused by 'other known factors' is a difficult task, as it involves appraisal of complex economic analyses. However, if the institutions could not properly segregate the injurious effect of other known factors, the injury would be credited to alleged dumped imports.<sup>126</sup> The absence of a specific criterion for such segregation makes this process more complicated, as Muller *et al.* noted that although the basic regulation and the WTO Agreement provide for analysis of injury caused by other factors, they do not provide a certain standard for such segregation.<sup>127</sup>

Similarly Simon Lester contends that threshold of substantial and genuine has never been defined by the WTO Agreement. The lack of clarity thus leads to a lot of uncertainty. This put an extra burden on investigative bodies in their investigation.<sup>128</sup> While, this thesis contends that, it also used to render extensive arbitrary powers to the national investigative authorities resultantly, it tends to conclude controversial decisions.

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<sup>126</sup> Van Bael and Ballis, *EU Anti-Dumping and other Trade Defence Instruments* (5th Edition, Kluwer Law International 2011) 331; Themistoklis Giannakopoulos, *A Concise Guide to the EU Anti-dumping/anti-subsidies Procedures* (Kluwer Law International 2006) 57

<sup>127</sup> Wolfgang Muller, Nicholas Khan and Tibor Scharf, 'EC and WTO Anti-Dumping Law: A Handbook' (Second Edition, Oxford University Press 2009) 311

<sup>128</sup> Simon Lester *et al.*, *World Trade Law: Text, Materials and Commentary* (2<sup>nd</sup> Edition, Bloomsbury Publishing 2012) 315

The Advocate General has tried to make the point that withdrawal or reduction of AD duty does not have any impact on the Union's industry unless it entered in the EU market, and the impact of approval of GSP status is on dumped imports itself instead of the Union's market. But it is submitted that another perspective is if the EU does not lift the previous protective measure imposed on Pakistan. And if the EU Council had not given GSP status to Pakistan, there would neither be any dumped imports nor any injury caused to the Union industry. Pakistani exporters should not be penalised for the actions and decisions taken by the European Union. They should also not be penalised for the policy shift of EU towards Pakistan.<sup>129</sup>

Moreover, the Advocate General has also overlooked the fact that before the grant of preferential tariff arrangement to Pakistan and the lifting of previous AD duties on Pakistani textile products, there was no complaint of injury caused to the Union industry. The applicant launched its application after the EU's policy shift regarding application of its protective measures on Pakistan. The magnitude of textile imports from Pakistan rapidly increased after grant of preferential access to Pakistan.

It is further submitted that supposedly the export price of Pakistani bed linen was £100/bundle before the lifting of previous AD duty, as Pakistani exporters were paying £15/bundle as a dumping duty. Therefore, as the previous AD lifted they started to export the same product at £85/bundle. Thus they were able to offer a cheaper and competitive price in EU market due to the relaxation and benefit given by the EU Council by its majority vote.

The researcher contends that if EU institutions do not change their AD policy regarding Pakistan with specific reference to import of bed linen, then Pakistani exporters will have to sell at their previous rate of £100/bundle instead of the new rate of £85/bundle due to the special tariff arrangement from the EU. Moreover, imposition of AD duty was the decision of the EU Commission and EU Council.

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<sup>129</sup> C-638/11 *Council of the European Union V Gull Ahmed Textile Mills Ltd* [2013], Opinion of AG Sharpston

Similarly, withdrawal of those duties with special market access arrangements was also the decision of EU institutions. EU institutions approved the GSP status knowing that it would make it possible for Pakistani exporters to sell their products at lower prices and thus may result in the form of injury to the Union industry.

This analyses corroborates Patrick Tayal's 'but for' test theory. This theory advocates that while assessing the substantiality and seriousness of injury caused to the local industry, the investigators should try to find out the root cause of the injury. He submitted that in some cases dumped imports are the root cause of injury but mathematically and technically it could not be considered as substantial.<sup>130</sup> 'But for' test does not look for a genuine and substantial link instead; it makes investigative authorities to explore the other causes of injury caused to the local industry in the absence of increased dumped imports.<sup>131</sup>

Tayal explains his theory with the help of following hypothesis. Supposedly, local market of country A is suffered by 2% due to the increased dumped imports from country Y. The local industry of country Y revolted against this upsurge which led to the political instability which led to further decline of the local industry by 10%. Mathematically the injury caused by the dumped imports cannot be considered as substantial within the meaning of Article 3.5 of the WTO Agreement but as a matter of fact it is the root cause of further 10% injury caused to the local industry. In such situation it is imperative to allow the country to put safeguard measures in order to protect its local industry from further deterioration.<sup>132</sup> However within the meaning of current causation analysis requirement, the local investigative authorities could not do anything to save their local industry.

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<sup>130</sup> Patrick Tayal, 'A New World of Causation in safeguards: Application of the 'But for' Test' (2015) 10 (10) Global trade and custom journal 355, 361

<sup>131</sup> David Leys, 'Does a Theory of Causation Exist under the WTO Safeguards Agreement?' (2014) 9 (1) Global Trade and Customs Journal 10, 17

<sup>132</sup> Simon Lester *et al.*, *World Trade Law: Text, Materials and Commentary* (2<sup>nd</sup> Edition, Bloomsbury Publishing 2012) 537



Although his analysis is in support of far reaching and open ended definition of injury caused by dumped imports but it gives a very helpful starting point about understanding the root cause of injury. Based upon the same principle, the EU institutions should have investigated the root cause of the injury caused to the Union industry, i.e. grant of preferential tariff arrangements to Pakistan and lapse of previously imposed ADD on Pakistan which led to the increased import of textiles from Pakistan.

Furthermore, the researcher does not agree with the Advocate General's comment that the analysis cannot be different if shipping costs are suddenly reduced, or if a duty previously imposed is removed. It is submitted that two aforementioned factors are not comparable, as reduction in shipping cost has a different origin and different significance. Unlike of the removal of previously applied duty and approval of preferential access, it is not sanctioned by the EU institutions. Neither has it represented the EU's AD policy for Pakistan.

However GSP status approved with the majority vote of the Council has an altogether different impact on mutual trade of EU and Pakistan. Similarly, unlike removal of previous AD duty, it does not convey a message to the Pakistani government and Pakistani exporters that you will be facilitated by preferential access arrangements and your export of cotton-type bed linen is welcomed in EU.

As for the Advocate General's opinion that legislative amendments are not a separate independent factor and its impact is on dumped imports instead of the EU's market, it could be argued that it is a separate and independent factor indeed, as to unfairly dump on the Union's market is the decision and action of foreign exporters, but to safeguard or allow foreign dumped imports in larger Community interest or to grant preferential arrangements to foreign exporters is the decision of the EU's institutions. They are not the same; instead they are altogether separate and independent factors being controlled by different authorities. Moreover, if it is admitted that the impact of approval of GSP status is on dumped imports themselves, then it means that the EU institutions facilitated foreign exporters to dump on their market.

## 5.7 CONCLUSION

The current chapter has evaluated the judgements of the General Court and the EU Court of Justice in Case T-199/04, and Case C-638/11. It is concluded that, the generality of Article 3(7) of basic regulation, and the absence of an exhaustive list of ‘other known factors’ in the said Article, led to inconsistent interpretations, as drawn by both courts. However, the interpretation of the Article 3(7), as drawn by the application of the ‘Mischief Rule’ of interpretation reveals that, the institutions must segregate the injurious effect of all other known factors from the injury caused by the dumped imports.

The institutions however, should not stick to the list of ‘other known factors’ provided in the Article 3(7), as this list is exemplary instead of being conclusive. However, they should evaluate the injurious impact of all possible other factors, as these factors may vary depending upon the changing circumstances of each case; the same was established by the General Court. On the other hand, the verdict of the EU Court of Justice, claiming that, legislative amendments could not be considered as ‘other known factor’ within the meaning of the Article 3(7) has been challenged (in this chapter) within the context of other case laws.

The next chapter answers the 2<sup>nd</sup> and 3<sup>rd</sup> research questions of this thesis, as it has evaluated the voting patterns and voting rationale of the EU member states (for or against the imposition of ADDs on imports originating from Pakistan). Similarly, on the basis of empirical data pertaining to the level of imports from Pakistan to the EU through last two decades; it investigates the impact of application of ADD on Pakistan’s imports.

## **CHAPTER SIX: EMPIRICAL STUDY OF THE EU MEMBER STATES' VOTING, RATIONALE OF VOTING AND IMPACT OF DUTIES ON FLOW OF IMPORTS FROM PAKISTAN**

### **6.1 INTRODUCTION**

This chapter deals with second and third (sub) research questions of the thesis whereby Sections 8.2 and 8.3 discuss the voting patterns of the EU member states and subsequent reasons for their unique voting styles. To examine the rationale of members' voting trends, the examples of Denmark and Sweden are used and conclusions are drawn on the basis of empirical data provided by the aforementioned states. However, Section 8.1 deals with the second sub research question whereby it intends to examine the impact of imposition of anti-dumping (AD) duties on scale of imports from Pakistan. In this respect, conclusions are drawn on the basis of data extracted from the Eurostat website. Instead of analysis of impact of anti-dumping duty (ADD) on overall imports from Pakistan to EU, this section precisely evaluates and compares the level of imports (of those particular products which have been subject to duty only) before and after the imposition of duty.

### **6.2 IMPACT OF IMPOSED DUTIES ON FLOW OF IMPORTS OF CONCERNED PRODUCTS FROM PAKISTAN**

#### **6.2.1 IMPACT OF DUTY IMPOSED BY COUNCIL REGULATION (EC) NO 1467/2004 ON IMPORTS OF POLYETHYLENE TEREPHTHALATE**

It is confirmed that from 1999, or even before 1999 to 2000, there were no imports of polyethylene terephthalate from Pakistan to the EU. The imports, however, started in 2001, which later drastically (100 times) increased in 2002. In

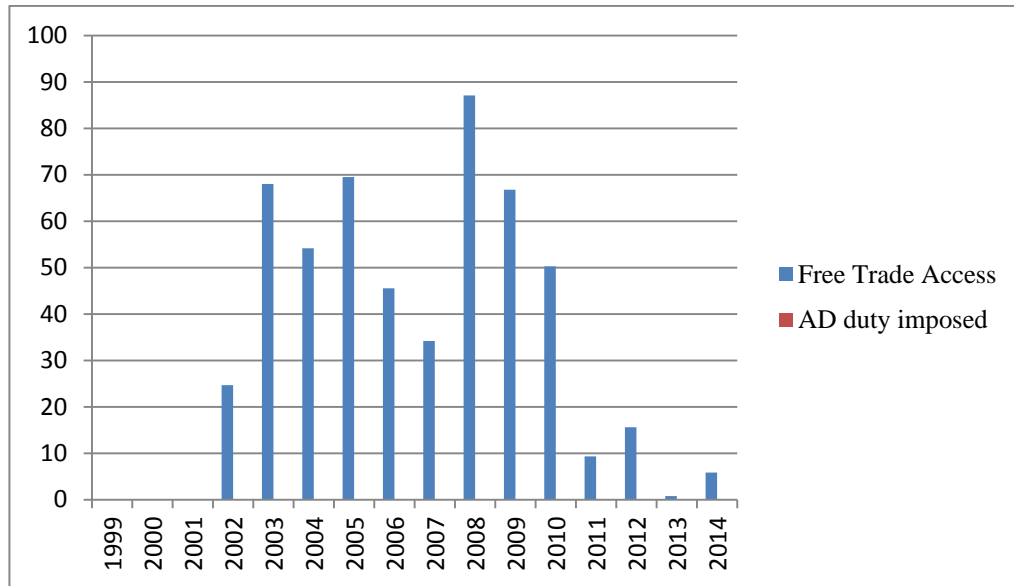
2003 they further increased about 300%. From 2003 to 2010 the level of imports had been fluctuating, with significant reduction in level of imports in 2007 (however above the level of imports in 2002), imports were at their highest level (through 16 years of imports from Pakistan to the EU) in 2008.

However, after termination of the AD investigation due to the calculation of negative dumping margin for sole trader of Pakistan (Novatex Ltd), in 2010 anti-subsidy duty was imposed on imports of same product from Pakistan. It resulted in a radical decrease in level of imports of polyethylene terephthalate from Pakistan. The scale of imports through the upcoming four years is comparatively found to be average ten times lower than the level of imports in 2002.

Therefore, it could be established that the imposition of anti-subsidy duty on imports of polyethylene terephthalate has resulted in significant reduction of imports from Pakistan to the EU. However, Vandenbussche *et al.* studied empirically the effects of European AD actions on import deviation from importers in an AD inquiry. They find that, in contrast to the US, trade deviation in the European Union instigated by AD actions is relatively limited.<sup>1</sup>

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<sup>1</sup> Hylke Vandenbussche *et al.*, 'On Import Diversion Under European Anti-dumping Policy' (1999) National Bureau of Economic Research Working Paper 7340  
<<http://www.nber.org/papers/w7340>> accessed 15 January 2015



**Figure 6.1: Shows the level of trade of polyethylene terephthalate before and after imposition of Subsidy duty in 2010**

**Source: Calculations based on Eurostat data**

**Table 6.1: Describing import of polyethylene terephthalate from Pakistan to the EU through the last 16 years**

**Source: Developed by the author based upon Eurostat data**

Year	Trade	Year	Trade
1999	-	2007	34200996
2000	-	2008	87090719
2001	22799	2009	66813814
2002	24692445	2010	50300617
2003	68059858	2011	9349700
2004	54184384	2012	1564525
2005	69525187	2013	797044
2006	45559621	2014	5881047

## **6.2.2 IMPACT OF DUTY IMPOSED ON IMPORTS OF COMPACT FLUORESCENT LAMPS**

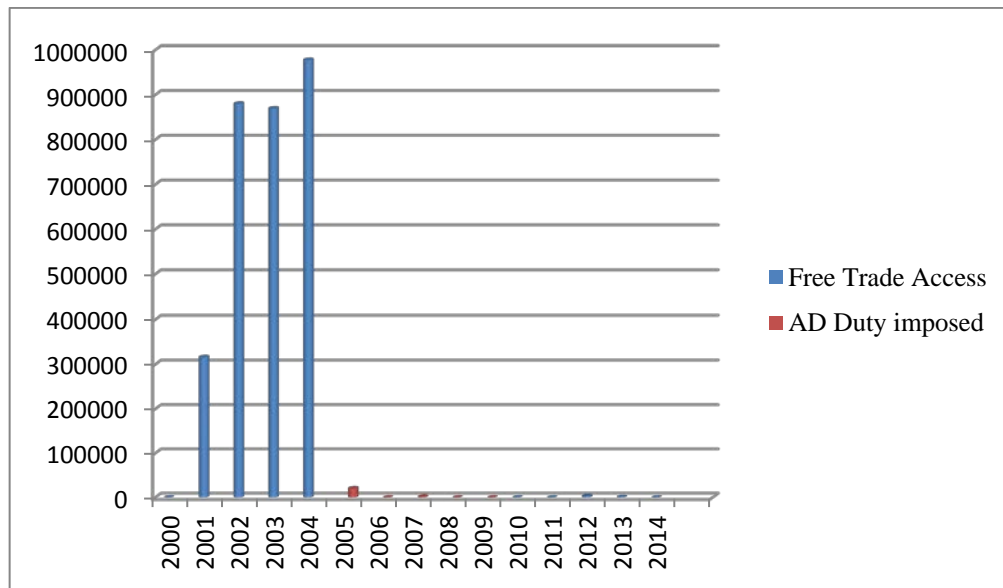
Drope and Hansen establish that increasing use of AD measures and their continued widespread use suggests that countries increasingly use AD measures to protect specific industries, and even negotiate ever more free trade agreements. They focus on and debate recent changes in the global use of AD policy as a probable tactical counterpoint to trade liberalisation. It seems to have contributed to an extraordinary number of countries handling more AD petitions and introducing more AD actions than ever before. These measures – and even the threat of measures – cause terrific levels of trade distortion in the form of reduced imports.<sup>2</sup>

Figure 8.2 reveals that there was no import of compact fluorescent lamps (CFL) from Pakistan to the EU in 2000 or before. There is an important co-relation between imposition of AD duty on imports of CFL on China in 2001 and the start of imports of the same product from Pakistan in 2001. The Commission's stance however, vindicated that imports from Pakistan were circumventing by means of transshipment and assembly procedures carried out in Pakistan, as the imports from Pakistan started just after the imposition of duty on Chinese imports.

However, it is difficult to conclude that imports from Pakistan worth a few hundred thousand euros can cause material injury to EU industry, or can significantly impede the impact of AD duty imposed on China. It is, however, evident that the imports of CFL from Pakistan were almost stopped after imposition of circumvention measures on Pakistan in 2004. The fact that the imports of CFL did not resume even after the expiry of circumvention measures in 2009 also establishes that imports from Pakistan were not genuine as, possibly after imposition of circumvention measures on Pakistan, the Chinese company decided to close its assembly procedure in Pakistan.

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<sup>2</sup> Jeffrey Drope and Wendy Hansen, 'Anti-Dumping's Happy Birthday' (2006) 29 (4) The World Economy 459, 459-460



**Figure 6.2: Differentiates the magnitude of import flow of CFL with and without the imposition of AD measures**

**Source: Developed by the author based upon Eurostat data**

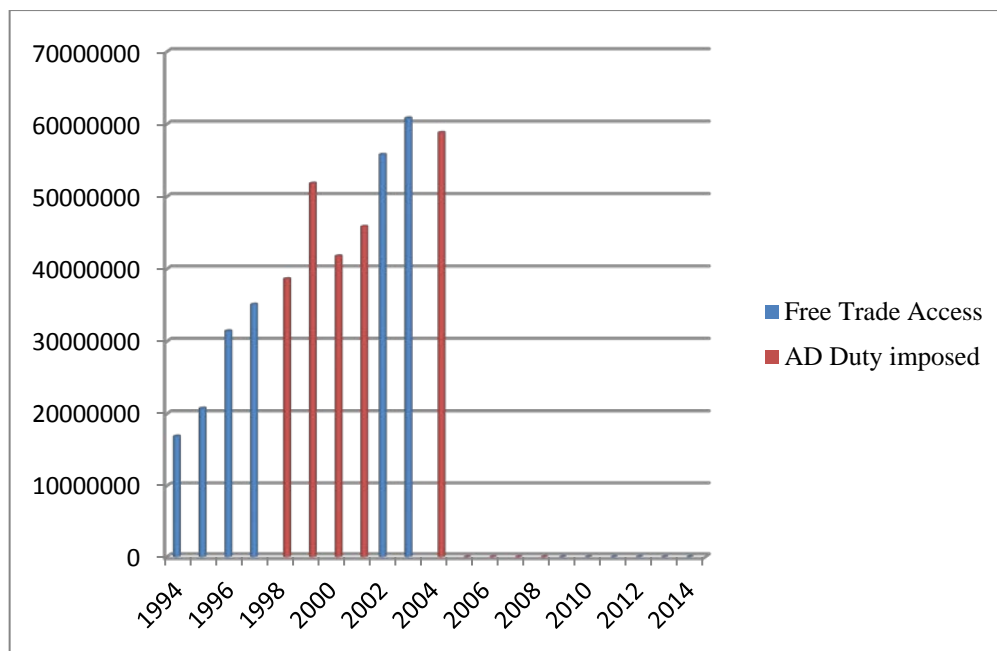
### **6.2.3 IMPACT OF AD DUTY IMPOSED ON IMPORT OF BED LINEN OF COTTON**

The data as prescribed in the following figure reveals that from 1994 to 1998 the scale of import has been increasing steadily. The imports had also been increasing from 1998 to 2002, despite the fact that AD duty was imposed by the EU on imports of bed linen of cotton through this period. Thus it could be established that in this case imposition of AD duty did not affect the flow of bed linen of cotton from Pakistan. After re-imposition of AD duty on imports of bed linen of cotton from Pakistan in 2004, the level of imports from Pakistan drastically reduced, and after 2005 no import of bed linen of cotton is seen from Pakistan to the EU, despite the fact that the rate of duty was reduced from 13.1% to 5.6% in 2006 through expiry review.

It is also noted that no imports of same product were seen even after expiry of AD measures in 2009. There must be some other reason for eradication of imports from Pakistan to the EU; the imposition of AD duty in 2004 could not

be a single reason, as previously from 1997 to 2002 it did not affect the magnitude of imports from Pakistan, despite the fact that the rate of duty was comparatively high at that time.

The lower amount of import diversion in Europe can be due to the lower duty levels as a result of injury margin protection, as opposed to higher dumping margin protection.<sup>3</sup> Unlike many other WTO member states, the EU has incorporated ‘lesser duty rule’ in its basic regulation, and it preferably used to have recourse to it. Therefore low duty rates calculated in all cases related to Pakistan (which are found to be less than 15% of export price) can be one of the significant reasons for lack of trade diversion from Pakistan.



**Figure 6.3: Shows the impact of imposition of anti-dumping duties on export of bed linen of cotton combined nomenclature (CN) Code 63023190 from Pakistan to the EU**

**Source: Researcher’s computations based on Eurostat data**

<sup>3</sup> Thomas Prusa and Susan Skeath, ‘On the Economic and Strategic Motives for Anti-Dumping Filings’ (2001) National Bureau of Economic Research Working Paper No 8424 <<http://www.nber.org/papers/w8424>> accessed 5 January 2015



**Table 6.2: Shows the flow of bed linen of cotton from Pakistan to the EU through the last 21 years-Value in Euros**

**Source: Researcher's computations based on Eurostat data**

Year	Trade	Year	Trade	Year	Trade
1994	16916316	2001	45866527	2008	-
1995	20779155	2002	55823667	2009	-
1996	31451256	2003	60852559	2010	-
1997	35123389	2004	58851774	2011	-
1998	38663372	2005	-	2012	-
1999	51843279	2006	-	2013	-
2000	41807707	2007	-	2014	-

#### **6.2.4 IMPACT OF AD DUTY IMPOSED ON IMPORTS OF BED LINEN OF COTTON MIXED WITH FLAX**

Similarly, a supplementary reason could be the absence of transparency and the larger extent of ambiguity regarding the actual levels of safeguard in Europe in contrast to the US, which could explain the comparatively small influence on non-named countries' imports into the EU.<sup>4</sup>

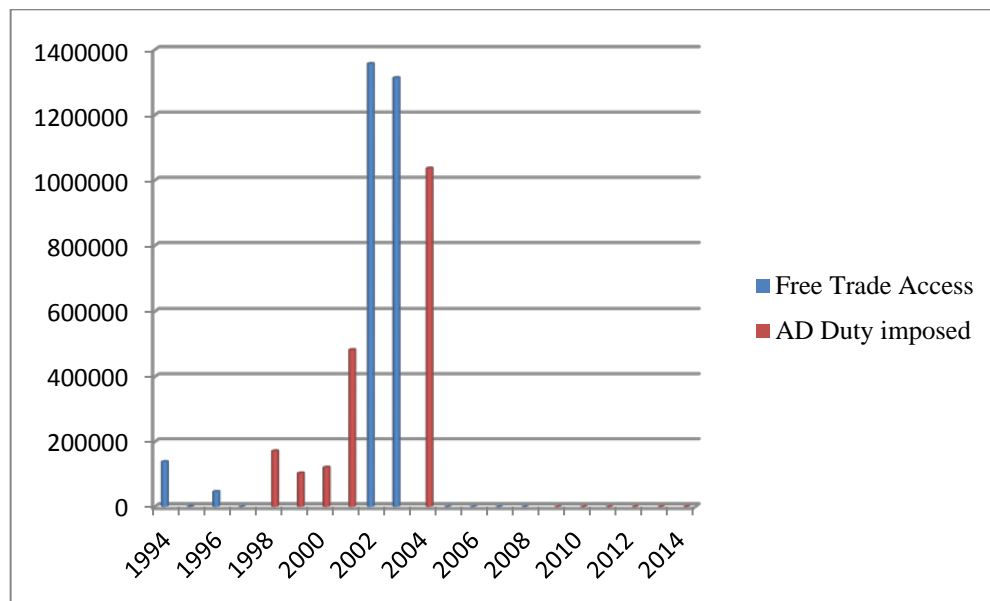
However, the analysis of current data established that import of bed linen of cotton mixed with flax was minimal from 1994 to 1997, although Pakistani exporters of bed linen had free access to EU markets. The negligible magnitude (below 0.2 million Euro) of imports in 1997, however, does not explain whether material injury could be caused to the EU market with this little scale of imports, as the EU Council in 1997 imposed definitive AD duty on imports of bed linen mixed with flax originating from Pakistan.

However, it is noted that the level of imports increased marginally through the duty period. It is also found that in 2003 after expiry of previously imposed AD measures, the magnitude of imports increased almost 150% as compared to the

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<sup>4</sup> Above (n 1)

previous year. After re-imposition of AD duty on the same product in 2004, no imports of product concerned could be seen from Pakistan to the EU.



**Figure 6.4: Differentiates the magnitude of imports from Pakistan to the EU of bed linen of cotton mixed with flax (CN Code 63023110) with and without application of safeguard measures**

**Source: Computations based upon Eurostat data**

**Table 6.3: Shows the flow of bed linen of cotton mixed with flax from Pakistan to the EU through the last 21 years: Value in Euros**

**Source: Author's computations based on Eurostat data**

Year	Trade	Year	Trade	Year	Trade
1994	138612	2001	482759	2008	-
1995	771	2002	1357612	2009	-
1996	46507	2003	1314346	2010	-
1997	-	2004	1037007	2011	-
1998	171887	2005	-	2012	-
1999	103491	2006	-	2013	-
2000	121194	2007	-	2014	-

### 6.2.5 IMPACT OF DUTY IMPOSED ON IMPORT OF BED LINEN OF MAN-MADE FIBRE

Figure 8.5 explains that the magnitude of imports of bed linen of man-made fibre has been steadily increasing, and the imposition of duty from 1997 to 2002 could not affect the level of imports, although after expiry of the measure in 2003 and 2004 a drastic increase in imports can be seen. However, Lasagni noted that imports from targeted countries were reduced almost 50% after the imposition of duty, but in the case of price undertaking the results are not clear. Moreover, full trade diversion as a result of application of ADD could not be proved from their analysis.<sup>5</sup> Similarly Vandesbussche *et al.* demonstrated that the EU's anti-dumping policy is more effective as compared to the US, as it causes less trade diversion pursuant to imposition of protective measures.<sup>6</sup>

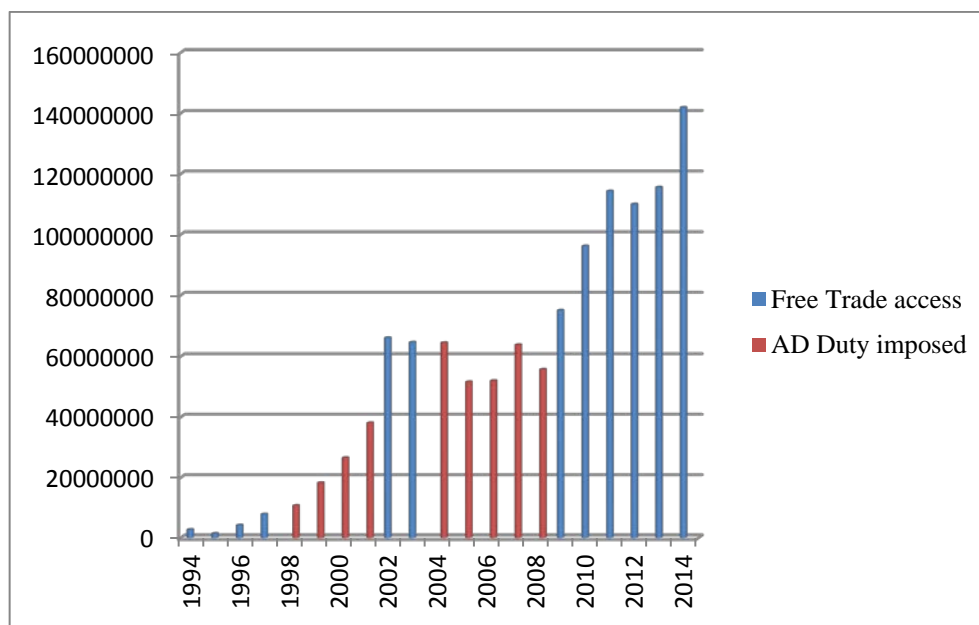
It is also revealed that the re-imposition of AD duty from 2004 to 2009 significantly reduced the volume of imports of bed linen from Pakistan. The volume of imports through the duty period (2004-2009) is found to be lower than the level of imports in 2002 (seven years ago).

The reduction of duty rate from 13.1% to 5.6% through expiry review in 2006 also could not show any positive impact on the scale of imports from Pakistan. It is further noted that after expiry of measures in 2009 the magnitude of imports from Pakistan has been significantly increasing every year from 2010 to 2014, as no negative trend could be seen through this period. It could however be concluded that in the case of imports of this particular product, the imposition of AD duty is proved to be a vital factor for reduction in imports from Pakistan.

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<sup>5</sup> Andrea Lasangi, 'Does Country-targeted Policy by the EU Create Trade Diversion' (2000) 34 (4) Journal of World Trade 137, 143

<sup>6</sup> Hylke Vandenbussche *et al.*, 'On Import Diversion Under European Anti-dumping Policy' (1999) National Bureau of Economic Research Working Paper 7340 <<http://www.nber.org/papers/w7340>> accessed 15 January 2015



**Figure 6.5: Differentiates the magnitude of imports from Pakistan to the EU of bed linen of man-made fibres (CN Code 63023290) with and without the application of anti-dumping duty**

**Source: Author's computations based upon Eurostat data**

**Table 6.4: Indicates the imports of bed linen of man-made fibre from Pakistan to the EU through the last 21 years: Value in Euros**

**Source: Author's computations based on Eurostat data**

Year	Trade	Year	Trade	Year	Trade
1994	2716423	2001	38125389	2008	55791012
1995	1421490	2002	66181055	2009	75251950
1996	4175119	2003	64697438	2010	96224863
1997	7845158	2004	64551469	2011	114321763
1998	10721873	2005	51648244	2012	110036191
1999	18293767	2006	52042684	2013	115602819
2000	26612777	2007	63854562	2014	141915979

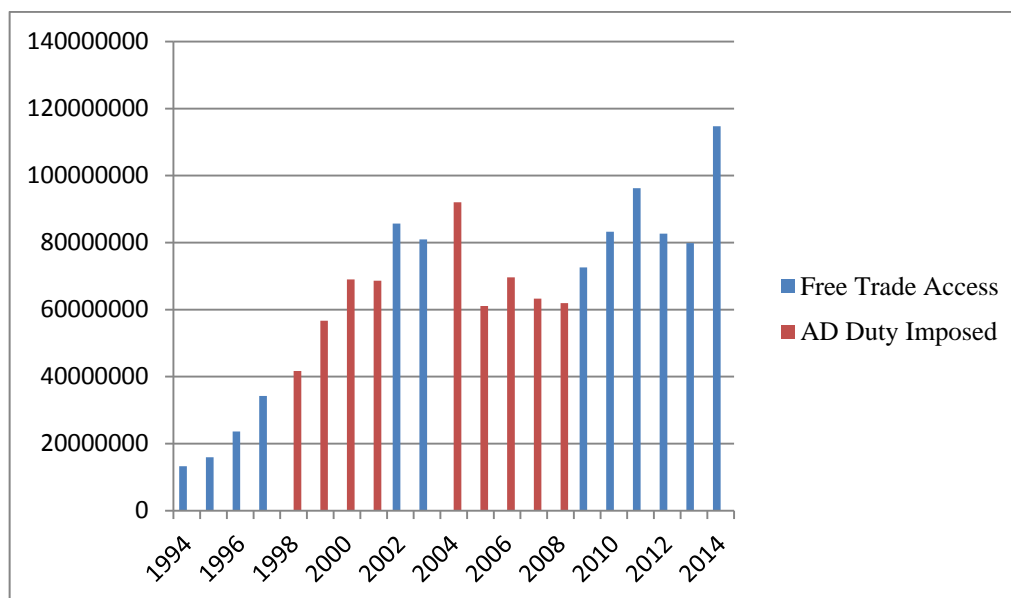
### **6.2.6 IMPACT OF AD DUTY IMPOSED ON IMPORT OF PRINTED BED LINEN**

It could be established that imposition of AD duty on printed bed linen from 1997 to 2002 has not affected the scale of imports, as imports could be seen to be flourishing significantly each year through the duty period. This increase in imports is as normal as in case of free trade access to EU market. Lasagni noted that the size of the anti-dumping duty can have a significant impact on the flow of trade. Thus, this minimal impact of EU duty on Pakistan's imports could originate from lesser duty rates.<sup>7</sup> However, it is noted that the second phase of duty from 2004-2009 seriously affected the flow of imports of printed bed line, as no sufficient improvement in magnitude of trade could be seen through these five years.

The size of imports in 2005, 2007 and 2008 is found to be even lower than in 2000. However, a substantial increase in the imports can be seen after lifting of safeguard measures in 2009, with the highest-ever scale of imports of product concerned in 2014. The size of imports in 2012 and 2013 is yet found to be less than 2004, however, as discussed in the case of bed linen knitted or crocheted; in this case as well it may be due to the reduction in production capacity of Pakistani exporters due to the prevailing energy crises in Pakistan.

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<sup>7</sup> Andrea Lasangi, 'Does Country-targeted Policy by the EU Create Trade Diversion' (2000) 34(4) *Journal of World trade* 137, 157



**Figure 6.6: Differentiates the magnitude of imports from Pakistan to the EU of printed bed linen of textile materials (CN Code 63022290) with and without application of anti-dumping duty**

**Source: Author's computations based on Eurostat data**

**Table 6.5: Illustrates the import of printed bed linen of textile materials from Pakistan to the EU through the last 21 years: Value in Euros**

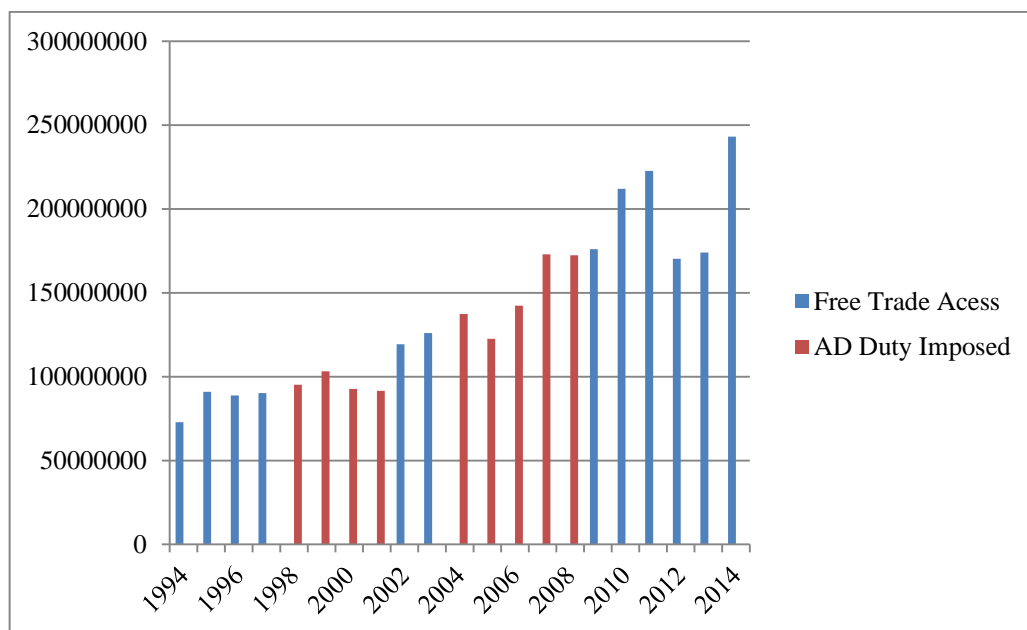
**Source: Author's computations based on Eurostat data**

Year	Trade	Year	Trade	Year	Trade
1994	13272964	2001	68630932	2008	61952094
1995	15935043	2002	85661371	2009	72579571
1996	23650001	2003	80965866	2010	83269033
1997	34223005	2004	92028329	2011	96227707
1998	41675666	2005	61079756	2012	82656976
1999	56686446	2006	69649608	2013	79846140
2000	68987267	2007	63276580	2014	114749296

### **6.2.7 IMPACT OF AD DUTY IMPOSED ON IMPORTS OF BED LINEN KNITTED**

The following data shows that imposition of AD duty on bed linen knitted or crocheted from 1997 to 2002 put a cap on the increase of scale of imports, as comparison of import magnitude from 1994-1997 (when Pakistani imports were eligible for free access to EU market) and imports from 1997-2002 (when AD duty was placed) reveals that the level of imports had been at a constant point through these eight years. However, normally it is observed that the magnitude of import improves on a yearly basis.

The second phase of duty on the same product from 2004 to 2009 shows a marginal increase in the imports. After expiry of measure in 2009 a drastic increase can be seen through years 2010, 2011 and 2014. However, loss of imports can be seen through 2012 and 2014, as no AD duty was in place at that time; however, one of the possible reasons may be the loss of production capacity of Pakistani manufacturers due to the prevailing energy crises in Pakistan.



**Figure 6.7: Differentiates the magnitude of imports from Pakistan to the EU of bed linen knitted or crocheted (CN Code 63022100) with and without application of anti-dumping duty**

**Source: Author's computations based upon the Eurostat data**

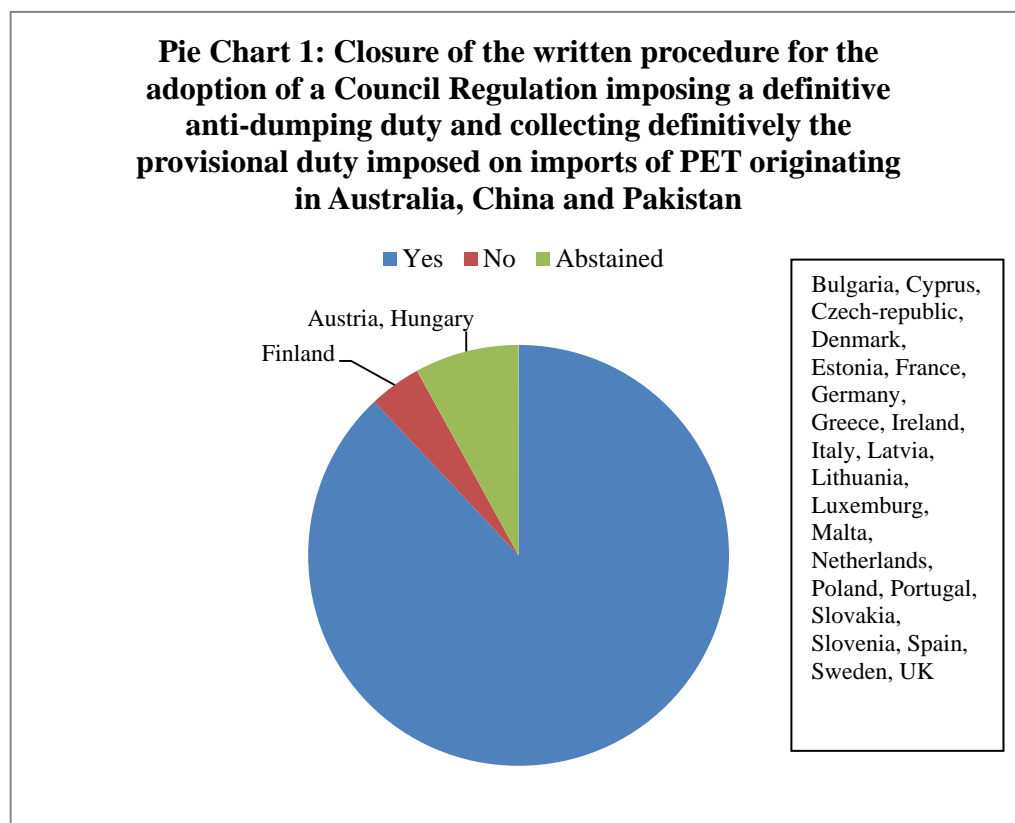
**Table 6.6: Demonstrates the import of bed linen knitted or crocheted from Pakistan to the EU through the last 21 years: Value in Euros**

**Source: Author's computations based on Eurostat data**

Year	Trade	Year	Trade	Year	Trade
1994	72838134	2001	91559219	2008	172379409
1995	90988056	2002	119371659	2009	176067015
1996	88771196	2003	125999419	2010	211990530
1997	90232194	2004	137349230	2011	222681531
1998	95216796	2005	122583031	2012	170347886
1999	103212225	2006	142367065	2013	174086560
2000	92722985	2007	173000462	2014	243177917



### 6.3 VOTING IN THE COUNCIL FOR/AGAINST ADOPTION OR TERMINATION OF AD MEASURES RELATED TO PAKISTAN



**Figure 6.8: Voting patterns of EU member states for/against imposition of ADD on imports of polyethylene terephthalate (PET) from Pakistan**

**Source: Developed by the author based on data provided by the General Secretariat of EU Parliament**

**Table 6.7: Closure of the written procedure for the adoption of a Council Regulation imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of polyethylene terephthalate originating in Australia, the People's Republic of China and terminating the anti-dumping proceeding concerning imports of polyethylene terephthalate originating in Pakistan and releasing the amounts secured by way of the provisional duties imposed**

**Source: Developed by the author based on data provided by the General Secretariat of the EU Parliament**

Delegation	Voting Pattern	Delegation	Voting Pattern	Delegation	Voting Pattern
Bulgaria	Yes	Finnish	No	Austrian	Abstained
Cyprus	Yes			Hungarian	Abstained
Czech-Republic	Yes				
Denmark	Yes				
Estonia	Yes				
France	Yes				
Germany	Yes				
Greece	Yes				
Ireland	Yes				
Italy	Yes				
Latvia	Yes				
Lithuania	Yes				
Luxembourg	Yes				
Malta	Yes				
Netherlands	Yes				
Poland	Yes				
Portugal	Yes				
Slovakia	Yes				
Slovenia	Yes				
Spain	Yes				
Sweden	Yes				
UK	Yes				

The data shows that a significant majority of member states voted in favour of termination of provisional measures imposed by the Commission on Pakistan for imports of polyethylene terephthalate. It includes all big European economies, e.g. UK, France and Germany. However, it is noted that the imports of polyethylene from Pakistan started in 2002, as before that there was no import at all. The member states which abstained from voting or voted against the termination of

proceedings against Pakistan were not having any imports from Pakistan before 2004. But there are many other member states, including Germany, Ireland, Poland and Sweden which were not having imports from Pakistan but voted in favour of termination of investigation against Pakistan.

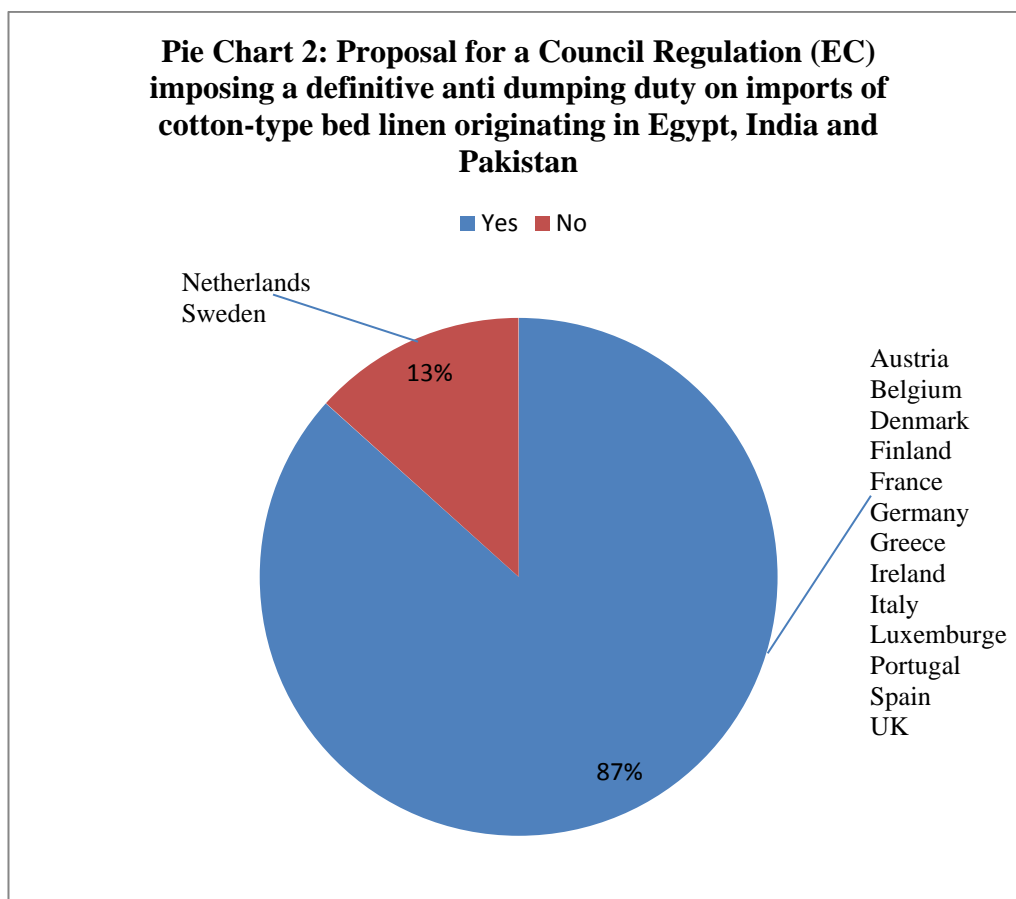
It has been noted that the voting style of member states significantly depends upon the location of Union industry. The member states having the presence of Union industry within their territory will be more inclined towards rigorous protectionism. However, the member states which do not possess Union industry will potentially adopt a more flexible approach to cheap foreign imports.<sup>8</sup> In the following examples, as the Union industry is concentrated in big European economies, therefore they have been supporting imposition of ADD on Pakistan.

It is noted that, in this case, Finland abstained from voting. Before March 2004, it was the rule of the EU's AD policy that abstentions from voting were counted as a 'No' vote. However, under the current policy, abstentions are counted as 'Yes' vote. Thus any member state which is not supporting the imposition of ADD will have to say 'No' clearly. They cannot adopt the easy and diplomatic route of abstention. Evenett and Vermulst opined that this practice tends to inhibit small member states from opposing the proposed protective measures, as they cannot oppose the influential bloc of big and pro-duty member states.<sup>9</sup>

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<sup>8</sup> Themistoklis Giannakopoulos, *A Concise Guide to the EU Anti-dumping/anti-subsidies Procedures* (Kluwer Law International 2006) 64

<sup>9</sup> Simon Evenett and Edwin Vermulst, 'The Politicisation of EC Anti-Dumping Policy: Member States, Their Votes and the European Commission' (2005) 28(5) *The World Economy* 701, 705



**Figure 6.9: Explaining the voting patterns of the EU member states for/against imposition of ADD on cotton-type bed linen of Pakistan**

**Source: Developed by the author based on data provided by the General Secretariat of the EU Parliament**

**Table 6.8: Proposal for a Council Regulation (EC) 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan**

**Source: Developed by the author based on data provided by the General Secretariat of the EU Parliament**

Delegation	Voting Pattern	Delegation	Voting Pattern
Austria	Yes	Netherlands	No
Belgium	Yes	Swedish	No
Denmark	Yes		
Finland	Yes		
France	Yes		
Germany	Yes		
Greece	Yes		
Ireland	Yes		
Italy	Yes		
Luxemburg	Yes		
Portugal	Yes		
Spain	Yes		
UK	Yes		

While talking about voting patterns in the EU Council, Nordström contends that the levying of AD measures on supposedly dumped imports to the European Union is essentially a political choice brought by the Council with simple majority.<sup>10</sup>

In the official perspective, AD is a ‘specialized choice’. This may be valid to the extent that the Commission is concerned. In any case, when the proposal reaches the member states, governmental issues take the front seat. Their appraisals recommend that the votes are principally determined by a national interest approach, and inclinations as communicated in opinion polls and decision declarations. Member states that incline towards protectionism are fundamentally

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<sup>10</sup> Håkan Nordström, ‘On the Political Economy of EU Anti-Dumping Policy: Decoding Member States Votes’ (2011) National Board of Trade, Sweden Discussion Paper  
[https://www.wto.org/english/res\\_e/reser\\_e/gtdw\\_e/wkshop11\\_e/nordstrom\\_e.pdf](https://www.wto.org/english/res_e/reser_e/gtdw_e/wkshop11_e/nordstrom_e.pdf) accessed 10 January 2015

more prone to backing AD recommendations than member states that incline towards unhindered commerce.<sup>11</sup>

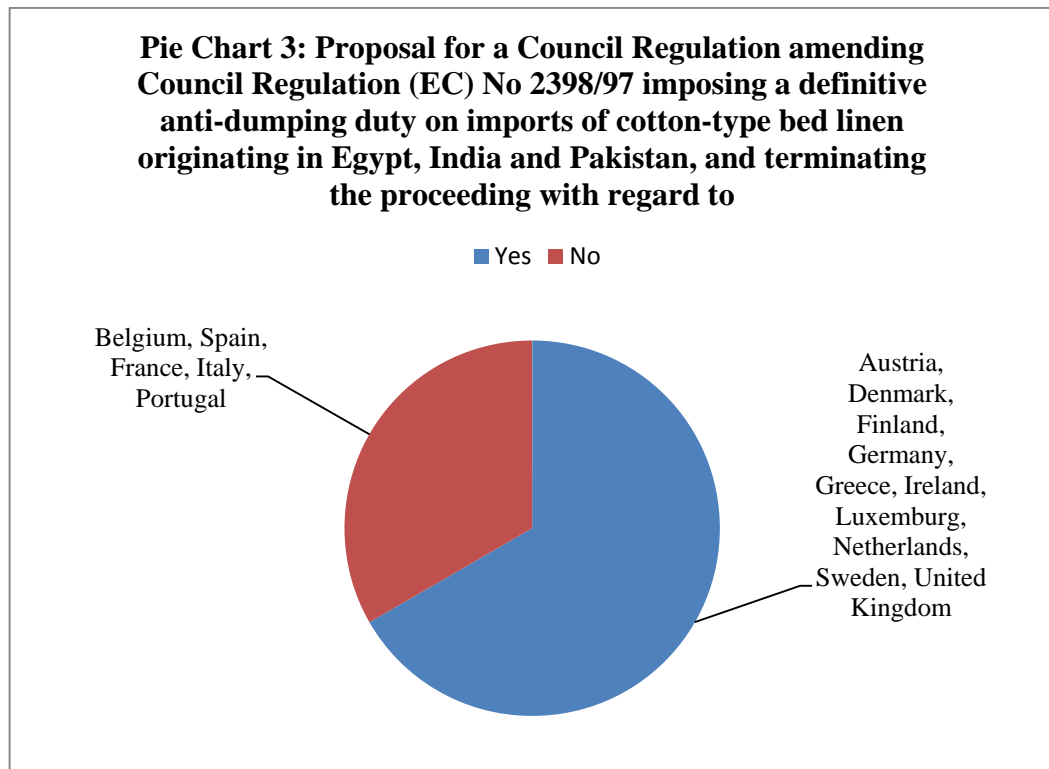
This thesis agrees with Nordström as far as it goes to identify member states tilted towards more protectionism and member states having more flexible approach to AD practices. The current data reveal that, Germany and France (Protectionists), the two largest importers of bed linen originating from Pakistan (Sweden and the Netherlands) voted against the imposition of protective measures on Pakistan's textile imports. However, some other large trading partners of Pakistan, including the UK, Germany, France, Spain and Italy, voted in favour of imposition of safeguard measures. Therefore, trade partner loyalty could not be considered as an exclusive reason for the voting patterns of member states. Moreover, it is also observed that some member states, e.g. Portugal and Luxembourg, with whom Pakistan was not having any trade of textile products, or some member states (Greece and Ireland) with whom Pakistan was having nominal trade of textile, also voted in favour of imposition of AD duty.

The existing literature suggests that the Community industry, being well associated, is proved to be more successful in securing its own interests. Moreover, it is best placed to obtain all the important information about activities in the member states, and thus to initiate the complaint. The importers and consumers are, however, found to be less effective in securing their interests.<sup>12</sup>

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<sup>11</sup> Ibid

<sup>12</sup> Johannes Beseler and Neville Williams, *Anti-dumping and Anti-subsidy Law: The European Communities* (Sweet & Maxwell 1986) 178; Katalin Cseres and Joana Mendes, 'Consumer's Access to EU Competition Law Procedures: Outer and Inner Limits' (2014) 51(2) Common Market Law Review 483, 502



**Figure 6.10: Explaining the voting patterns of the EU member states for/against imposition of ADD on cotton-type bed linen of Pakistan in 1997**

**Source: Developed by the author based on data provided by the General Secretariat of the EU Parliament**

**Table 6.9: Proposal for a Council Regulation (EC) 160/2002 amending Council Regulation (EC) No 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan, and terminating the proceeding with regard to imports originating in Pakistan**

**Source: Developed by the author based on data provided by the General Secretariat of the EU Parliament**

Delegation	Voting Pattern	Delegation	Voting Pattern
Austria	Yes	Belgian	No
Denmark	Yes	Spanish	No
Finland	Yes	French	No
Germany	Yes	Italian	No
Greece	Yes	Portuguese	No
Ireland	Yes		
Luxemburg	Yes		
Netherlands	Yes		
Sweden	Yes		
United Kingdom	Yes		

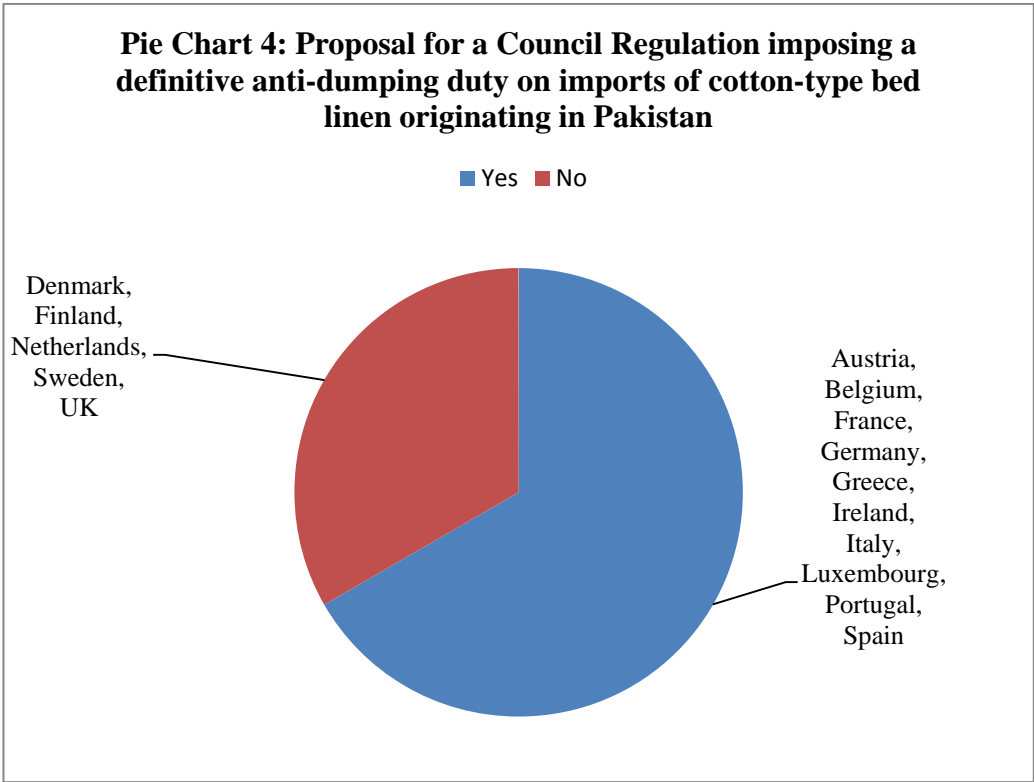
It is observed that, around 2000, France was the largest importer of Pakistan made textile products, with an average import magnitude of around 50 million Euro. Despite this fact it opposed the proposal to terminate AD measures levied against Pakistan. However, the second largest trading partner of Pakistan (the UK) favoured such termination. It is also noted that Germany, having quite less import magnitude as compared to the size of its economy, also favoured the termination of AD duty imposed against Pakistan.

Similarly, Spain and Italy were also having nominal import magnitude as compared to their economic size, while Portugal was having imports from Pakistan just in few thousand Euros. Some of the member states (the UK, the Netherlands and Sweden) who supported the termination of measures were having large import size from Pakistan, while Luxembourg was not having any imports from Pakistan, but it also supported the termination of definitive ADD.

Evenett *et al.* have noted that five member states (France, Spain, Italy, Portugal and Greece) have supported the imposition of ADD with a huge rate of 85%. It



seems that these member states are the core supporter of imposition of ADDs. On the other hand, seven member states (UK, Denmark, Sweden, Finland, Germany, Luxembourg and Netherlands) have less than 16% support ratio. However, it is noted that, the current preceding and forthcoming voting patterns of the member states seem to be in conformity with Evenett *et al.*'s findings. For example, the same five member states bloc was found to be a core supporter of the imposition of ADD on Pakistan's bed linen. Nevertheless, of Germany's below 15% support ratio, it is found that, in the case of application of ADDs on Pakistan, Germany is mostly found to be in favour.<sup>13</sup>



**Figure 6.11: Explaining the voting patterns of the EU member states for/against imposition of ADD on cotton-type bed linen of Pakistan in 2004**

**Source: Developed by the author based on data provided by the General Secretariat of the EU Parliament**

<sup>13</sup> Simon Evenett and Edwin Vermulst, 'The Politicisation of EC Anti-Dumping Policy: Member States, Their Votes and the European Commission' (2005) 28(5) *The World Economy* 701, 710

**Table 6.10: Proposal for a Council Regulation (EC) 397/2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan**

**Source: Developed by the author based on data provided by the General Secretariat of the EU Parliament**

Delegation	Voting Pattern	Delegation	Voting Pattern
Austria	Yes	Danish	No
Belgium	Yes	Finish	No
France	Yes	Netherlands	No
Germany	Yes	Swedish	No
Greece	Yes	United Kingdom	No
Ireland	Yes		
Italy	Yes		
Luxembourg	Yes		
Portugal	Yes		
Spain	Yes		

Bièvre *et al.* argue that the current anti-dumping framework of the EU came under criticism when several protective measures imposed by the institutions gathered controversy among different stakeholders and member states. One of those cases was bed linen duty imposed on Pakistan, India and Egypt. During 1996 to 2002, several anti-dumping complaints were filed by Eurocoton against those countries.<sup>14</sup>

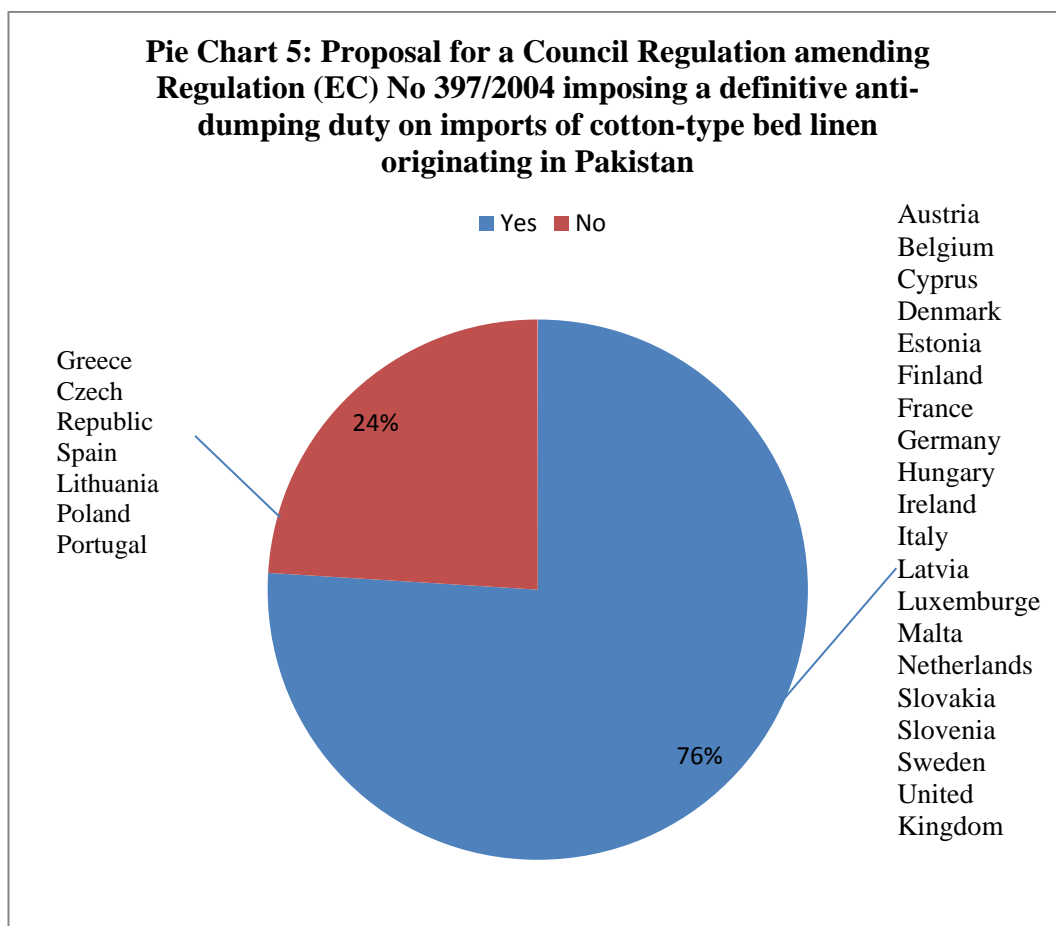
Dutta establishes that these several complaints filed by Eurocoton about the alleged dumping had caused significant controversy among southern producers of the bed linen, supported by the southern member states with such production and importers based in the northern member states. He further found that, in India's case the vote was tied by 7-7, with Germany finally casting the tie-breaking vote. He found the same trend in Pakistan's case.<sup>15</sup>

<sup>14</sup> Dirk Bièvre and Jappe Eckhardt, 'Interest Groups and EU Anti-Dumping Policy' (2011) 18(3) Journal of European Public Policy 339, 351

<sup>15</sup> Shaswata Dutta,, 'The Bed Linen Case - A Case Study' (2006) 20  
<<http://ssrn.com/abstract=880347>> accessed 15 March 2015

This thesis supports Dutta's finding as far as it goes to explain the different voting trends of southern and northern member states, as it gives one of the most important voting rationale of the member states. The detailed analysis of trade data related to imports of bed linen from Pakistan to the EU in 2003 reveals that the United Kingdom, being the largest importer of Pakistani bed linen with an approximate import magnitude of around 70 million Euros, and the Netherlands, being the fourth largest importer with an import magnitude of around 28.8 million Euros, voted against the imposition of protective measures against Pakistan's textile imports. However, France, Germany and Belgium, being second, third and fifth largest importers respectively, voted in favour of the application of ADD.

Additionally, Italy and Spain were having relatively less imports as compared to their economic size, but they also voted in favour of safeguard measures. It is also observed that Denmark and Finland, having nominal imports from Pakistan of even less than 0.5 million Euro, voted against the imposition of ADD. Therefore, apart from the UK and the Netherlands, all other member states showed a mixed trend, as trade partner loyalty could not be found to be the reason of their voting trend. However, the UK's and the Netherlands' extensive imports from Pakistan explains their rationale for opposing such measures.



**Figure 6.12: Explaining the voting patterns of the EU member states for/against amendment of previously imposed ADD on cotton-type bed linen of Pakistan in 2006**

**Source: Developed by the author based on data provided by the General Secretariat of the EU Parliament**

**Table 6.11: Proposal for a Council Regulation (EC) 695/2006 amending Regulation (EC) No 397/2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan**

**Source: Developed by the author based on data provided by the General Secretariat of the EU Parliament**

Delegation	Voting Pattern	Delegation	Voting Pattern
Austria	Yes	Czech Republic	No
Belgium	Yes	Greek	No
Cyprus	Yes	Spanish	No
Denmark	Yes	Lithuanian	No
Estonia	Yes	Polish	No
Finland	Yes	Portuguese	No
France	Yes		
Germany	Yes		
Hungary	Yes		
Ireland	Yes		
Italy	Yes		
Latvia	Yes		
Luxembourg	Yes		
Malta	Yes		
Netherlands	Yes		
Slovakia	Yes		
Slovenia	Yes		
Sweden	Yes		
United Kingdom	Yes		

It is observed that after the imposition of definitive ADD at the rate of 13.1% in 2004 on cotton-type bed linen, the import magnitude in 2005 significantly declined, as imports of Pakistan's largest importer (UK's) imports declined from 71 million Euros to 32.1 million Euros. It is also found that import of one out of four types of the product concerned permanently stopped after 2004. All member states which opposed the reduction of duty rate from 13.1% to 5.6% through above voting were found to be having minimal import from Pakistan (on average less than 1 million Euros).

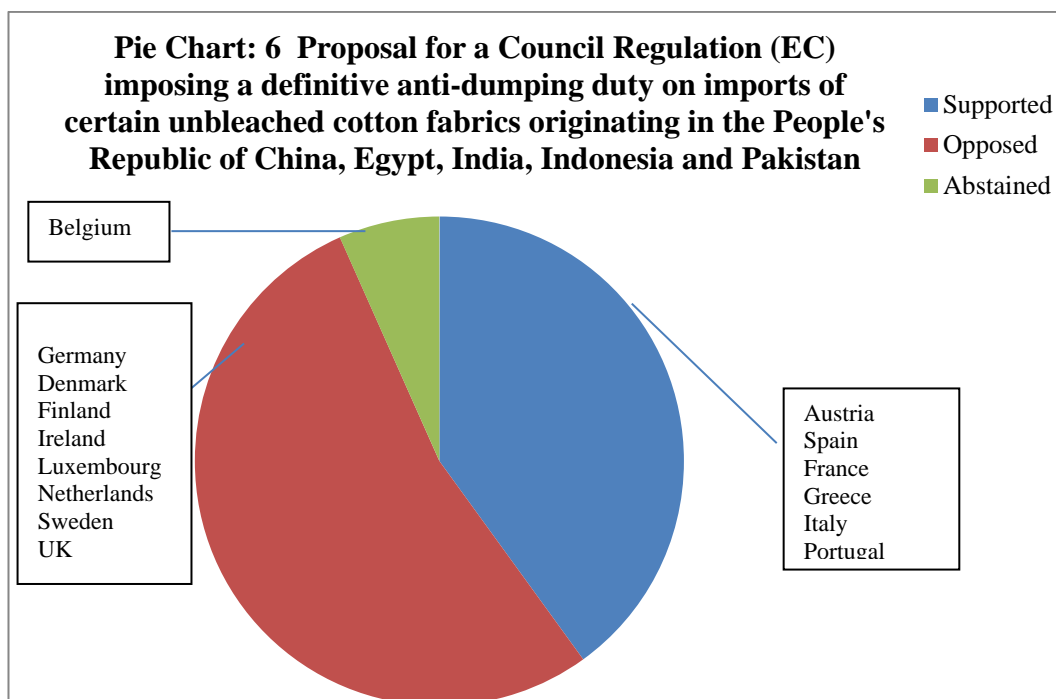
All large trading partners of Pakistan in the textile sector, including the UK, France, Germany, Belgium, the Netherlands, in 2005 having import capital respectively 32.1, 36.3, 23.4, 26.8 and 20.3 million Euros, supported the reduction of duty rate for Pakistani textile imports. One of the possible reasons for the differing voting pattern of member states may be that those member states (e.g. the UK and the Netherlands) which are significantly dependent on textile imports, and thus do not have a local textile industry, usually oppose the imposition of measures within the Council. On the other hand, the member states having a significant local textile industry mostly tend to support the imposition of ADD on foreign imports.

Evenett and Vermulst established that the accession of ten new member states can potentially have an impact on the EU's trade defence policy. They analysed ten nations' prior protectionist approach in order to assess their tendency towards the EU's trade defence proposals. Only five nations out of ten had invoked AD measures during an extended period running from 1995 to 2003, while only two (Lithuania and Poland) out of these five countries had invoked more than one anti-dumping investigation. These statistics show that none of the newly joined member states will have a pro-protectionist tendency. Thus, they are more likely to join the pro anti-duty bloc within the EU.<sup>16</sup>

However, in the case of Pakistan, with specific reference to the current voting patterns for the proposed reduction of ADD on Pakistan's bed linen, it is found that out of ten newly joined member states, seven member states supported the reduction of ADD. However, three new member states (Lithuania, Poland and Czech Republic) showed a pro-protectionist tendency. As the majority of them have shown a more flexible and liberalised approach in this case, it could be said that this data confirms the findings of Evenett *et al.*

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<sup>16</sup> Simon Evenett and Edwin Vermulst, 'The Politicisation of EC Anti-Dumping Policy: Member States, Their Votes and the European Commission' (2005) 28(5) *The World Economy* 701



**Figure 6.13: Explaining the voting patterns of the EU member states for/against imposition of ADD on unbleached cotton fabrics originated from Pakistan**

**Source: Developed by the author based upon data provided by the EU Parliament about voting patterns of member states**

It is witnessed that Belgium, being the largest importer of unbleached cotton fabric from Pakistan (in 1995 import worth of 27.5 million Euros), abstained from voting. The second and third largest importers, Germany and the UK respectively, voted against the imposition of measures. However, none of the top three largest importer countries were in favour of the imposition of ADD, while France, having nominal imports (2.6 million Euros) as compared to the imports of other economies of almost the same size, voted in favour of such measures. Other small economies of the European Union have shown a mixed trend, as some of them favoured and some opposed the application of ADD on Pakistan's unbleached cotton fabric.

It is noted that in the EU, unbleached cotton fabric was being produced in France, Italy, Spain and Portugal,<sup>17</sup> while the rest of the member states depended on imports from Pakistan, India, China and Turkey. However, the voting pattern of the member states revealed that the member states which were relying upon imports opposed the imposition of ADD, while a small bloc of member states which have their own textile industry supported the imposition of protective measures.

Evenett *et al.* discuss the politicisation of AD laws, and identify two blocs of member states depending on their voting behaviours for levy of AD duties on importing countries. They argue that, especially since 1997, the role of the member states in the EC AD system is substantial. In the late 1990s, a robust anti-AD duties bloc seems to have developed among member states, and they increasingly challenge proposals for definitive duties made by the EC. This resistance also accorded with a sharp fall in the number of EC AD investigations from 1999. A shift has occurred towards a more member-state-dominated or 'politicised' AD system from a Commission-controlled system.<sup>18</sup>

They contradicted with the existing literature on political economy of EU's protective measures, which have tried to establish the strong role of the technocrats on the dumping and injury investigations.<sup>19</sup> The findings of Evenett and Vermulst are corroborated by this study, as it is found that in the case of the application of safeguard measures against textile products originating from Pakistan, whether bed linen or staple fibre fabric, two blocs of member states could be found within the Union. One relatively small group includes the UK, the Netherlands and Scandinavian countries, which usually oppose the application of measures; while the other relatively large group, mostly led by France, Germany, Italy and Spain, was often found to be supporting the application of ADD on textiles originating from Pakistan. Moreover, in the analysis of all voting patterns

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<sup>17</sup> Ibid, 701

<sup>18</sup> Ibid

<sup>19</sup> Angelika Eymann and Ludger Schuknecht, 'Antidumping Policy in the European Community: Political Discretion or Technical Determination?' (1996) 8(2) Economics and Politics 111



related to the application of ADD on textile products, a similar style of voting has been found throughout.

## **6.4 THE RATIONALE OF EU MEMBER STATES' VOTING FOR/AGAINST ADOPTION OR TERMINATION OF ANTI-DUMPING MEASURES RELATED TO PAKISTAN: AN EXAMPLE OF DENMARK AND SWEDEN**

In this section reference is made to correspondence between the author and the permanent representations to the European Union of Denmark and Sweden (September 2015). This correspondence is recorded in full at Appendix III and Appendix IV to the present dissertation.

### **6.4.1 POLYETHYLENE TEREPHTHALATE**

The national economic interest of the member states is one of the most significant rationales or reasons for their particular voting pattern, and the same is documented by the analysis of current data. However, Evenett and Vermulst recorded two types of third-party influences, including the influence of diplomats of a country whose imports are under investigation, and the influence of the EC itself.<sup>20</sup>

They do not find any evidence of an EU attempt to reduce the level of support of member states in respect of a particular anti-dumping investigation. However, the Union institution has been found to use varying techniques to increase the level of support of member states in favour of certain AD measures. These include: reduction in the magnitude of proposed duty; narrowing the scope of the investigation; narrowing the definition of product concerned; and minimising the duration of definitive measures.<sup>21</sup>

While Engering *et al.* established that it is not only the national interest of the member states that inclines them towards their specific voting pattern, it also

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<sup>20</sup> Simon Evenett and Edwin Vermulst, 'The Politicisation of EC Anti-Dumping Policy: Member States, Their Votes and the European Commission' (2005) 28(5) *The World Economy* 701, 712

<sup>21</sup> *Ibid.*, 713

depends upon how they see the world trading system. According to the Dutch perspective, it is in the interest of all that; AD measures should be applied in a restrictive and transparent way.<sup>22</sup>

In the same way, diplomatic action, lobbying and threat of retaliation are also one of the very significant rationales of member states for their particular voting pattern. This diplomatic influence may be exerted in different ways, including: the diplomats of the target country lobby member countries in the EU or through EU ambassadors; secondly, the trading partner agrees to restrict or reduce the level of imports; thirdly, the trading partner meets with Commission officials; lastly, the target country benefits from special tariff arrangements.<sup>23</sup>

It is noted that newspaper reports suggest that Pakistan's diplomats used their influence to lobby different EU member states in order to get GSP-plus status from the EU. The grant of status was supported by 406 members of the EU Parliament while 186 lawmakers opposed it.<sup>24</sup> Latterly it was reported that after the grant of GSP-plus status, imports from Pakistan to the EU increased by \$1bn.<sup>25</sup> It is also noted that that Government of Pakistan asked its mission based in Brussels to kick-start lobbying in order to secure an extension in GSP-plus status.<sup>26</sup>

However, the analysis of current data reveals that, trade partner loyalty are not found to be the reason for the voting of two member states. It appears that the revised proposal contained lower duties on imports from Australia and China than otherwise envisaged. Also, it would seem that the Commission had found at a late stage that there was no basis for imposition of measures against Pakistan. Thus, it could be established that member states decision to vote in favour of termination

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<sup>22</sup> Frans Engering, Hans Brabander and Edwin Vermulst, 'EC Anti-Dumping Policy in a Globalising World: A Dutch Perspective' (1998) 32(6) *Journal of World Trade* 115, 126

<sup>23</sup> Above (n 9) 714

<sup>24</sup> Dawn News, 'EU Grants GSP Plus Status to Pakistan' 12<sup>th</sup> December 2013 <<http://www.dawn.com/news/1072051>> accessed 11<sup>th</sup> September 2016

<sup>25</sup> Dawn News, 'Exports to EU increased by \$1bn under GSP-Plus Status: Minister' 9<sup>th</sup> February 2015 <<http://www.dawn.com/news/1162476>> accessed 11<sup>th</sup> September 2016

<sup>26</sup> The Express Tribune, 'Govt Starts Lobbying for Extension in GSP Plus Scheme' 4<sup>th</sup> March 2016 <<http://tribune.com.pk/story/1058956/govt-starts-lobbying-for-extension-in-gsp-plus-scheme/>> accessed 11<sup>th</sup> September 2016

of proceedings regarding alleged dumped imports of polyethylene terephthalate was based on the revised findings of the Commission which later resulted in the form of negative dumping margin for Pakistan.

## **6.4.2 COMPACT FLUORESCENT LAMPS**

### **6.4.2.1 COUNCIL REGULATION (EC) 866/2005**

Vermulst objected to the quality of decision-making in the Council. He found that in some controversial and important cases, e.g. in Eurocoton (Case C-76/01), although the Commission found material injury caused to the Union industry and Union interest test calls for imposition of protective measures, even then measures could not be enforced because it all depends on the qualified majority vote of the member states in Council to approve or disapprove the proposed measures. The member states, however, may vote 'No' due to some unknown reasons or due to their national interest. Although it is good for exporters and end users, it makes the EU's AD system transparent and arbitrary.<sup>27</sup>

However from analysis of current data it is found that, two EU member states believe that imports from Pakistan Vietnam and the Philippines were circumvented, as imports from said countries started just after the initiation and later of the AD investigation against China. They further argue that although the magnitude of imports of CFL from Pakistan is small, it can cause undercutting effect on existing safeguard measures imposed on China. In this case as well the outcome of the investigation, as conducted by the Commission (regarding transshipment, and assembly procedures) is found to be the reason behind the voting of the two EU member states.

This suggest that, in competition cases, the Commission acts on behalf of member states (principal) whereby the latter delegate powers to be exercised by the Commission on behalf of member states. However, it seems that in European AD framework the agent is more powerful as compared to its principal. The

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<sup>27</sup> Edwin Vermulst, 'The 10 Major Problems with the Anti-Dumping Instrument in the European Community' (2005) 39(1) Journal of World Trade 105, 113

Commission can initiate the proceedings by *suo motu* but it can also impose provisional measures which may last for a maximum 15 months. This blockage of trade by the Commission (with any significant trading partner of the EU) for 15 months without the apparent consent of member states denotes the extensive powers available to the Commission.<sup>28</sup>

Moreover, the principal being represented by the Council of European Union has to rely extensively on the findings of the Commission, as the Commission carries out the verification visits, thus the Council has to draw its findings on the basis of data generated by the Commission. Likewise, Dur *et al.* noted that, agent can exploit its principal where the member states have conflicting interests and thus give a vague mandate with equal votes in support and opposition of proposed measures.<sup>29</sup>

#### **6.4.2.2 COUNCIL REGULATION (EC) 1205/2007**

Both Denmark and Sweden believe that there were no sufficient grounds to continue the measures, as they believed this to be against Union interest. Denmark claimed to be dealing with a situation where many producers had already outsourced production to third countries. Secondly, they argue that measures were mainly put in place to offer protection to one European producer at the expense of European consumers, who would have to pay considerably more for the product. Furthermore, it did not appear that other European producers supported the measures.

While discussing the politics of global sourcing, particularly with reference to the EU's trade in bicycles with China and Vietnam, Eckhardt states that, during the most recent two decades, the quantity of makers in the European Union (EU) that have outsourced manufacture to Asia has expanded massively. In the meantime, there are likewise still a lot of firms that create their items in the EU. In this

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<sup>28</sup> Daniel Mugge, 'The European Presence in Global Financial Governance: A Principal-Agent Perspective' (2011) 18(3) Journal of European Public Policy 383-402

<sup>29</sup> Andreas Dur and Manfred Elsig, 'Principals, Agents and the European Union's Foreign Economic Policies' (2011) 18 (3) Journal of European Public Policy 323, 330

manner, Eckhardt contends that these two groups of firms for the most part have altogether different trade policy inclinations.<sup>30</sup>

The principal kind of firms would typically incline towards liberal EU trade policies versus Asian Countries, as they profit by the inflow of items made in Asia. However, the second kind of firms anticipated that they would support the levying of AD measures against Asian imports, as the net after-effect of expanded EU trade with Asia is in general negative to them. This division regularly prompts exceptional legal and political squabbling between the two contradicting sides.<sup>31</sup>

This thesis supports and corroborates Eckhardt's analysis, as in this investigation, discussed in detail in section 2.7.3; it was found that the manufacturers highly dependent upon outsourced parts (Philips) were against the imposition of ADD. However, the other manufacturers were in support. Therefore, in some cases, the voting of the member states also depends upon strong lobbying of particular groups of industry operating within it.<sup>32</sup>

It could be established that throughout this investigation (from initiation of investigation till imposition of definitive measures), not only the EU member states but the Community industry as well seems to be divided in two groups, as member states having 56% voting rights abstained from voting, while members having 44% voting rights rejected the proposal. Similarly, complaint for initiation of proceedings could not be considered to be made on behalf of Union industry as, Union industry constituting 48% of total production of the Union supported the initiation of investigation, while Union industry constituting 52% of total Union production opposed the imposition of provisional measures. It could be considered as one of the debatable investigations as conducted by the EU Commission.

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<sup>30</sup> Jappe Eckhardt, 'On the Politics of Global Sourcing: A Case Study of EU's Trade in Bicycles with China and Vietnam' (2011) Centre for International Management and Development Antwerp Discussion Paper No 79 < [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2005732](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2005732) > accessed 10 January 2015

<sup>31</sup> Ibid

<sup>32</sup> Jorgen Nielsen and Gert Swendsen, 'EU Lobbying and Anti-Dumping Policy' (2012) 46 (1) Journal of World Trade 187-211

The healthy majority of members opposing the extensions of measures also reveal that the EU member countries opposing and supporting the measures had significant conflict of interest, and they interpreted the Union (Community) interest differently. The researcher assumes that there were two strong hold within the Union industry, one which was significantly relying on Chinese imports and the other relying completely on home production.<sup>33</sup> The geographical existence of Union industry having varying interests insisted their respective governments speak for them in the Council.

### **6.4.3 COTTON-TYPE BED LINEN**

#### **6.4.3.1 PROPOSAL FOR ADOPTION OF COUNCIL REGULATION (EC) 2398/97**

Sweden opposed the actions for three main reasons, which also became the Swedish standpoint. First, the measures against India and Pakistan were subject to quantitative restrictions, which means that the calculation of the dumping and injury margins become uncertain, because the price picture is affected by the restrictions. Compelling reasons were also the principal Swedish objection to this double safeguard.

Second, reference was made to the restructuring that took place in the field, so that the manufacture of basic bed linen was placed to third countries while product development, design and marketing remained in the Community. Thus, it should be in the interest not to hinder such a natural process through the introduction of protective measures. Thirdly, Sweden reasoned that the cost of AD measures would be passed on to consumers, and that the impact of this would not be only minimal, as the Commission claimed.

Assembly and association of specific stakeholders (Union manufacturers) is one of the key reasons for the member states' support of protective measures. Bievre noted that it is the local manufacturers who are assembled most appropriately in the form of effective and strong associations, for example the European

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<sup>33</sup> Case T 469/07 Philips Lighting Poland S.A. and Philips Lighting BV v Council of the European Union [2008] OJ C51

Federation of Cotton and Textile Industries (Eurocoton). It could be said that the big industries like steel, copper and textiles are more associated and united as compared to the small industries. The small industries are found to be fragmented, thus their filing ratio is low.<sup>34</sup>

Peter Mandelson's effort to reform the EU's basic trade defence instrument failed because the proposal was blocked by lobbying of Union industry.<sup>35</sup> The firm association among industries helps them in two ways: firstly, it is easy for the most associated industry to get the required number for the launch of investigations; secondly, they are in a better position to lobby within the EU institution and secure their interest.<sup>36</sup>

On the other hand, it could be said that it is the consumers who are less united and thus very weak to protect their interest, as they are not assembled as are other stakeholders. Therefore, in the absence of an equal footing of all stakeholders it is very difficult to ensure the Community interest before the imposition of a duty, as the importers, consumers and small industries are not as united and strong as are the big industries like steel, iron and textiles. Interest groups lobby more politicians as compared to the executives, and protectionists lobby more effectively as compared to free trade-oriented groups.<sup>37</sup>

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<sup>34</sup> Andreas Dur, *Protection for Exporters. Power and Discrimination in Transatlantic Trade Relations, 1930 – 2010* (Cornell University Press 2010) <http://cadmus.eui.eu/handle/1814/14335> accessed 10th June 2016

<sup>35</sup> Dirk De Bièvre and Jappe Eckhardt, 'Interest Groups and the Failure of EU Antidumping Reform' (Paper for the Workshop 'The EU in the World Economy' Lisbon, 2009) <<https://ecpr.eu/Filestore/PaperProposal/943248f2-963c-4eee-bc1d-6cbdc900555b.pdf>> accessed on 14th July 2016

<sup>36</sup> Dirk De Bièvre, 'Interest Groups and EU Anti-Dumping Policy' (2011) 18(3) *Journal of European Public Policy* 339, 341; Jorgen Nielsen and Gert Swendsen, 'EU Lobbying and Anti-Dumping Policy' (2012) 46 (1) *Journal of World Trade* 187-211; Frans Engering, Hans Brabander and Edwin Vermulst, 'EC Anti-Dumping Policy in a Globalising World: A Dutch Perspective' (1998) 32(6) *Journal of World Trade* 115, 126

<sup>37</sup> Andreas Dur and Elsig Manfred, 'Introduction: Principals, Agents, and the EU's Foreign Economic Policies' (2011) 18 (3) *Journal of European Public Policy* 323, 328; Edwin Vermulst, 'The 10 Major Problems with the Anti-Dumping Instrument in the European Community' (2005) 39(1) *Journal of World Trade* 105, 112; Katalin Cseres and Joana Mendes, 'Consumer's Access to EU Competition Law Procedures: Outer and Inner Limits' (2014) 51(2) *Common Market Law Review* 483, 502

Denmark, however, supported the proposal to adopt definitive AD measures with respect to all three countries. The permanent representative of Denmark cannot explain why Denmark supported the proposal, as they cannot locate any record of this regulation, which is 18 years old.

#### **6.4.3.2 PROPOSAL FOR COUNCIL REGULATION (EC) 160/2002**

Nordström recorded that vote trading can also be one of the possible reasons for specific voting of member states. In this case, member states lobby to get each other's reciprocal support for certain measures. The member states may compromise their lesser interest in a specific case to get other member states' support in another particular case, where its higher interest is involved. In these cases sometimes the EU Commission strategically presents two proposals simultaneously.<sup>38</sup>

Bown and Blonigen hypothesised that threat of retaliation from the target country may also be one of the possible rationales for member states' voting style.<sup>39</sup> Although there is a lack of significant data to prove these hypotheses, at least in the case of Pakistan it may be presumed that threat of retaliation is not a possible reason. The EU may be threatened with retaliation by its large trading partners such as China or the USA, however small economies like Pakistan may not have significant implications in this regard.

However, the analysis of current data reveals that, the amendments concerning imports from Egypt and termination of measures on imports from Pakistan followed from an appellate body report and a panel report which had resulted in suspension of measures on imports of bed linen from India. The council had considered it appropriate to recalculate the dumping margins for Egypt and Pakistan without use of the 'zeroing' methodology. This resulted in no dumping being found on imports from Pakistan. Furthermore, measures on imports from

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<sup>38</sup> Håkan Nordström, 'On the Political Economy of EU Anti-Dumping Policy: Decoding Member States Votes' (2011) National Board of Trade, Sweden Discussion Paper  
<[https://www.wto.org/english/res\\_e/reser\\_e/gtdw\\_e/wkshop11\\_e/nordstrom\\_e.pdf](https://www.wto.org/english/res_e/reser_e/gtdw_e/wkshop11_e/nordstrom_e.pdf)> accessed 10 January 2015

<sup>39</sup> Bruce Blonigen and Chad Bown, 'Antidumping and retaliation threats' (2003) 60 (2) Journal of International Economics 249, 251



Egypt were suspended. Evidently, measures cannot be in place when no dumping is found. Denmark therefore supported the amendments, including termination of measures against imports of bed linen from Pakistan.

#### **6.4.3.3 PROPOSAL FOR COUNCIL REGULATION (EC) 397/2004**

One of the possible rationales of voting styles of member states may be based on the geographical existence of the Union industry. If cotton industries do not have a presence in a certain member state, it will preferably say ‘No’ to the proposed imposition of ADD. Pollack argues that the big industries are strategically concentrated in large countries, as half of AD complaints receive support from Germany and one third of them are supported by French-origin companies. Similarly, the big industrial groups can strategically spread their network in most of the member states instead of being concentrated in a few states, as it will help them to get support from most of the members: wherever the big industries have a presence in the Union.<sup>40</sup>

However, the analysis of the current data reveals the Danish reasoned that, according to the Commission’s own investigation, producers from Pakistan exported the product concerned to the EU with an average profit of 3.5%, and their increase in market share was relatively modest. Furthermore, EU industry had a healthy profit, and was able to increase its sales (although market share declined somewhat). Turnover, sales and prices showed a positive trend. Also, European producers could not satisfy demand in the EU for bed linen. Injury is therefore limited, and may be caused by other factors, in addition to which it may not be in the Union’s industry.

Therefore significant doubts arise as to the appropriateness of measures imposed to protect an industry which appeared relatively healthy at the time. Similarly, Sweden opposes the Commission’s proposal for definitive AD duties on imports of bed linen from Pakistan due to the questioning of serious injury to the

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<sup>40</sup> Mark Pollack, ‘The Political Economy of the Transatlantic Partnership’ (2003) 5 <<http://www.eui.eu/Documents/RSCAS/e-texts/200306HMTMvFReport.pdf>> accessed 30 June 2016

Community industry and on causation with respect to imports from Pakistan. Both Sweden and Denmark, however, think that the alleged injury was not material within the meaning of the basic regulation. They also doubt the efficacy of non-attribution analysis (segregation of other known factors from alleged dumped imports) as conducted by the EU Commission.

#### **6.4.3.4 PROPOSAL FOR COUNCIL REGULATION (EC) 1205/2007**

Denmark had not supported the imposition of AD measures against bed linen from Pakistan in 2004, and therefore welcomed the interim review and proposal to lower the duties on the products. Although it was not in favour of the measures, however, the lower duty of 0-8.5% constituted a significant improvement.

Sweden was heavily dependent on imports of bed linen from Pakistan, and has also opposed the imposition of definitive measures against Pakistan. Sweden supported the Commission's proposal to temporarily suspend the bulk of the duty to not over-compensate the protection of the Community industry introduced by the Council, and also to take account of the changed market conditions as the earthquake disaster in Pakistan caused.

### **6.5 CONCLUSION**

To conclude, it could be said that a mixed trend is found about impact of imposition of duties on the flow of imports from Pakistan. Sometimes the imports of concerned products were found to be increasing through the duty period although; the ratio of increase is noted to be marginal. In the majority of cases it is established that imposition of duty kept the level of imports at a constant point (import magnitude is found to be same as it was five years before). However, in some cases it is found that the imposition of AD duty significantly deteriorated the scale of imports from Pakistan to the EU. Therefore, it could be established that imposition of AD duty on imports of concerned products originating from Pakistan has mostly affected the scale of imports from Pakistan, although there are some exceptions.

It could also be said that trade partner loyalty is not found to be the reason for specific voting trends of the EU member states. Their voting trends, however, were found to be associated with their consent or dissent with the findings of the Commission. Sometimes the member states are found to be unsatisfied with the calculation of material injury caused to the Union industry, similarly they were also found to be challenging the non-attribution analysis (segregating injury caused by other known factors from injury caused by alleged dumped imports) as conducted by the Commission.

The most common and significant reasons to vote 'NO' for the Commission's proposal to adopt definitive measures is found to be the varying Community (Union) interest calculation by the Commission and the member states. The two member states (Denmark and Sweden), however, were found to be opposing measures, arguing that imposition of measures will cause unreasonable expense for consumers. The geographical existence of Union industry complaining about alleged dumped imports is also a significant decisive factor for voting of the member states. If textile industry being totally absent in states D, E and F, dominantly exists in states A, B and C, it is more likely that states A, B and C will vote in favour of imposition of measures, while states D, E and F may have a lack of interest for such measures.

Moreover, it is found that in the event of use of protection measures against textile products originating from Pakistan, whether bed cloth or staple fibre fabric, two alliances of member states could be found inside the Union. One moderately little group incorporates the UK, the Netherlands and Scandinavian nations, which normally contradict the use of measures, while the other generally huge group, for the most part led by France, Germany, Italy and Spain, is frequently observed to be supporting the utilisation of ADD on materials originating from Pakistan.

## **CHAPTER SEVEN: FINDINGS AND CONCLUSION**

### **7.1 INTRODUCTION**

This study was set to explore the application of European anti-dumping (AD) law in respect of Pakistan. It has examined all investigations conducted by the Commission whereby safeguard measures were applied against imports of certain products originating from Pakistan. Through such examination of the Commission's investigations, this study has identified many occasions where the institutions acted inconsistently in different cases but having similar circumstances. This study sought to answer the following three research questions:

1. How consistently do the EU institutions, including the Commission and the EU Court of Justice, interpret and implement their AD law with reference to Pakistan?
2. What were the voting patterns of the EU member states in the EU Council for imposition of duties on Pakistan, and what were the reasons for those particular voting patterns?
3. How does the imposition of AD duty affect the level of imports from Pakistan to the EU?

Since no previous research has been done on the application of AD law by the EU related to Pakistani exports, this thesis originally contributes to existing knowledge by evaluating the calculations and findings drawn by the Commission through all investigations conducted by it during the last two decades.

In this chapter each of the substantive findings made thus far will be reviewed. This will enable the various threads of argument to be drawn together. This

chapter is divided into five main sections, starting from an introduction; the second section is composed of the main findings of the study. Within the second section, a number of subsections summarise and unite all the recommendations and key findings based upon the analysis of the Commission's investigations discussed in Chapters 2, 3 and 4, and the interpretation of other known factors as made by the EU Courts in the *Gul Ahmed* case (Chapter 5). The findings and recommendations about the subject matter of chapter 6 are sufficiently described in that chapter itself.

## **7.2 RECOMMENDATIONS AND FINDINGS**

### **7.2.1 SECTION 2.1**

#### **7.2.1.1 COMMISSION'S OBLIGATION TO GIVE ADEQUATE STATEMENT OF REASONS**

In section 2.1 it is noted that Article 2(4) of the basic regulation requires three conditions to be fulfilled in order to consider a transaction not in the ordinary course of trade.

The review of the investigation revealed that the EU Commission reported fulfilment of only one condition, i.e. substantial trade in this case more than 20% of the total sale. However, the Commission could not confirm in the regulation whether such non-profitable sale had been continued for a prolonged period (at least six months). Secondly, the Commission must have to establish that such non-profitable sale did not provide for recovery of cost of production within a reasonable time. The Commission may have established all these three conditions, but if it has done so it must explain and report the fulfilment of the other conditions.

Conversely, if the EU Commission has failed to establish the fulfilment of all three conditions as provided by Article 2(4), and presumably it is a manifest error of assessment by the Commission.

#### **7.2.1.2 EXCESSIVE DISCRETION IN ARTICLE 2(4)**

Moreover, this dissertation finds that under Article 2(4) of the basic regulation, to establish the sale below cost in substantial quantity the EU Commission can have recourse to two different checks. Therefore, if ‘substantial quantity’ does not meet with the 20% non-profitable threshold, the Commission may establish this by concluding that the average sale price is below the average cost of production. However, it is contended that, unlike this optional use of any test among two, the basic regulation should provide for a single criterion to establish the substantial quantity.

### **7.2.2 SECTION 2.2**

#### **7.2.2.1 MANIFEST ERROR OF ASSESSMENT COMMITTED BY THE COMMISSION**

In section 2.2, it was found that Commission committed manifest error of assessment by considering a single company as a separate albeit related company, despite the fact that both of them were sharing the same brand name, administrative staff, operating premises and directors. The author, however, argues that such manifest error of assessment is highly unlikely where exporters are fully cooperating, and information provided by them could be easily verified by verification visits. However, the positive aspect is that following the complaint by the exporter, the Council rectified the calculation accordingly.

It is also found that both the EU Commission and the Council adopted different methodologies to calculate normal value in similar circumstances for the same trader, in breach of the equality principle. Out of five types of polyethylene terephthalate (PET) involved in the investigation, the Commission calculated normal value of four types of PET on the basis of actual price paid on domestic market in accordance with Article 2(1), while normal value of one type of PET was constructed in accordance with article 2(3) as, its sale on the domestic market was found to be insufficient (constituting less than 10% of exports of same product to the Union).

On the other hand, the Council finding insufficient sale of three types of PET on domestic market (representing less than 10% of exports), constructed their normal value. Resultantly, both institutions calculated highly varying dumping margins (14.8% of export price as calculated by Commission and 1.6% *de minimis* of export price calculated by the Council) for the same exporter. However, the positive aspect of this investigation is that the error of calculation regarding normal value was later rectified by the Council, and the duties paid by Pakistani traders in terms of provisional measures were released. However, this shows that, how vulnerable is the ‘constructed normal value’ phenomena. The WTO and its members need to tighten the conditions of Article 2(1) and (3).

#### **7.2.2.2 COMMISSION’S STATEMENT ABOUT NUMBER OF TYPES OF PRODUCT WHOSE SALE FOUND IN “ORDINARY COURSE OF TRADE” IS INSUFFICIENT**

For the purpose of calculation of ‘constructed normal value,’ the Commission, however, does not clearly state the number of types of PET whose sale was found to be in ordinary course of business (thus their calculation was based on an average of all sale transactions), and vice versa. For the understanding of all interested parties, it should be clarified accordingly, as both categories entail different methodologies for calculation of normal value; thus it can significantly affect the outcome of investigation. As it is said before, Article 2(1) and 2(3) of the basic regulation should offer more consistency and its generality should be narrowed.

#### **7.2.3 INCONSISTENT CALCULATION OF NORMAL VALUE AND DUMPING MARGIN AS PERFORMED BY THE COUNCIL AND COMMISSION**

In the current investigation, the product concerned was not divided into different types, rather it was placed under the same homogeneous group, thus instead of using different approaches to calculate normal value, a single method was used (on the basis of average normal price paid by consumers on domestic market, as domestic sale was found to be representative of export sale). Possibly this was

also the reason for calculation of varying dumping margin in both investigations (14.8% of the export price was calculated in the former inquiry, while 0.6% of export price was calculated in the latter).

Moreover, it is noted that after termination of proceedings in 2010 bearing the calculation of negative dumping margin in respect of the sole Pakistani exporter, an anti-subsidy proceedings was initiated against the same exporter alleging subsidised imports of same product (polyethylene terephthalate), which resulted in imposition of anti-subsidy duty through Commission Regulation (EU) 473/10. The author however, suggests that, this open ended exit from AD proceeding to Anti-Subsidy proceedings should be closed.

#### **7.2.4 BREACH OF THE EQUALITY PRINCIPLE**

In section 2.4, it was seen how the complainants in this investigation (about alleged dumped import of ethyl alcohol) withdrew their complaint claiming that the level of imports from Pakistan had reduced due to the grant of Generalised System of Preference (GSP) status to Pakistan although these imports were still dumped. However, it is found that grant of GSP status apparently may not be cause for reduction of imports from Pakistan. The GSP status (a promise by the EU to liberalise trade and allow free trade access to imports from Pakistan through grant of preferential tariff arrangements) tends to increase the level of imports instead.

The same issue was under consideration in Case T-199/04, where the Council of the EU argued that the impact of GSP status is on dumped imports themselves, and the conduct of the Union's industry could not be affected by legislative amendments or grant of GSP status to Pakistan.

The Commission's argument was that, as combined data of alleged dumping was used to establish the injury to the Union's market, therefore investigation should be terminated in respect of Guatemala as well. Therefore, the equality principle was breached because if the Union industry was being injured substantially, a fresh investigation however, might have been conducted based on exclusive data of injury caused to the EU due to alleged dumped imports from Guatemala.



## **7.2.5 SECTION 2.5**

### **7.2.5.1 VIOLATION OF ARTICLE 5(4) BY THE COMMISSION**

In Section 2.5, it was found that the Commission's statement (that the majority of the Community producers support the initiation of alleged circumvention investigation) is vague. The Commission is supposed to specifically state the percentage of Community producers supporting the complaint. Additionally, it is established that the original investigation (imposing AD duty on China) lacks 50% (representative) Union industry threshold to initiate and continue the investigation. It is, however, found that Union producers constituting 48% of total production of product concerned in the Union were supporting the complaint while, Union producers having 52% share were opposing the investigation. The Commission however, violated Article 5(4) of the basic regulation which allows the initiation of inquiry only if at least 50% of union producers support such initiation. Therefore, there is persistent need of a WTO's framework for observing the implementation of representative threshold as applied by its member states.

### **7.2.5.2 COMMISSION'S NON COMPLIANCE WITH ARTICLE 13(4)**

It was also concluded that one of the three necessary conditions to establish the existence of alleged circumvention is to prove that the parts constitute 60% or more of the total value of the parts of the assembled product, and the value added to the parts brought in during the assembly is less than 25% of the manufacturing cost of the product concerned. It is, however, not clear on what basis (data or information) the Commission established the above-mentioned facts, as Ecopak's (Pakistani trader) accounts were found not to be in accordance with international standards, and thus the EU Commission had to rely on an alternative source.

Moreover, it is concluded that the other two conditions of Article 13(4) were duly met, as it is evident from data (Eurostat) that the impact of AD duty imposed on PRC was lessened, as the quantity of imports from Pakistan increased significantly and Ecopak started to export to the EU just after the imposition of AD duty on China in 2001. However, there was no import from Pakistan to the Union before 2001. The Commission, however, derogated from its responsibility

to state adequate reasons for its actions as required by the basic regulation. In many investigations and cases analysed in this thesis, contending parties are found complaining about transparency of investigations and Commission's findings. Therefore, being fully agreed with Edwin A. Vermulst this thesis also calls for more transparency in AD investigations.

## **7.2.6 SECTION 2.6**

### **7.2.6.1 MANIFEST ERROR OF ASSESSMENT COMMITTED BY THE INSTITUTIONS WITH REGARD TO ARTICLES 5(4) AND 9(1)**

In Section 2.6, it was tentatively concluded that the EU Council made a manifest error of assessment by initiating an expiry review of dumping measures imposed on imports of compact fluorescent lamps (CFL) from China, Pakistan and Vietnam. The basic objective of the legislator behind Article 5(4) is that if at any point in the investigation this express support of 50% is reduced, the investigation cannot continue. But there is an arguably inconsistent provision Article 9(1) in the basic regulation that if Community interest calls for intervention, the EU Commission may continue the investigation, instead of the fact that the complaint is entirely withdrawn. It could be recommended that the presence of both above mentioned provisions cause confusion, therefore if the EU Parliament wants to grant wide discretionary power to the Commission then Article 5(4) of the basic regulation should be amended accordingly.

Secondly, it is found that in this case the Council used Article 9(1) by analogue, although it was not related to the issue at hand. Article 9(1) of the basic regulation authorises the EU institution to continue the investigation on the ground of Community interest demand, although the complainants have withdrawn their complaint. This Article was not applicable in the current case, as unlike the fresh complaint as discussed in Article 9(1), the current case is related to the expiry review.

Moreover, if investigative bodies start applying different provision of the basic regulation on cases having different circumstances, it may tend to seriously challenge the consistent application of law. Although the Council's argument is

strong, to the extent that if the institutions can continue the investigation in case of complete withdrawal of the complaint, it means they can also continue if its support from the Community interest is reduced. But it does not mean that the institutions can interpret the legal provision, and apply them by analogue. Instead in these circumstances institutions are expected to have recourse to the Judicature.

#### **7.2.6.2 COMMISSION'S EXCESSIVE DISCRETION AND USAGE OF DIFFERENT METHODOLOGIES IN INVESTIGATIONS REACHING THE OPPOSITE CONCLUSIONS**

It is found that the Commission has used a different methodology in expiry review and original investigation regarding definition of Community industry. According to the interpretation as made by the EU Courts, institutions can use different methodologies in review and original investigation if circumstances have significantly changed. However, it is found that no significant shift of circumstances occurred through original and expiry review investigation.

It could also be established that often the EU Courts have vindicated the EU institutions' claim and actions. The judgements of the EU Courts by their interpretations have far extended the discretionary powers of the institutions from those discretions given by the basic regulation. Although discretionary powers are sometimes necessary due to the varying circumstances of the cases, these discretionary powers should not be used as a matter of option, instead only in case of necessity.

The recurrent example of wide discretion is Article 5(4), whereby the EU Commission by option for the definition of Community industry can either consider the whole EU industry of the like product, or consider only major manufacturers out of it. However, there is no apparent reason for this optional approach. Article 5(4) however, should provide for only one criterion for defining the Union industry, as in other case it causes absurdity.

### **7.2.7 EXCLUSION OF *DE MINIMIS* DUMPING MARGIN CALLS FOR AMENDMENT OF ARTICLE 9(6)**

In Section 3.1, with respect to the Commission Regulation (EC) 1069/97, it was found that while constructing average dumping margin for the cooperating traders which were not included in the sample, the EU Commission excluded the *de minimis* dumping margin. Thus average dumping margin was calculated on the basis of positive dumping margin only. Although the Commission acted completely within the ambit of authority provided by Article 9(6) of the basic regulation, but this thesis objects to the said provision as well. It is contended that the average dumping margin for the cooperating trades not included in the sample should be calculated on the basis of the whole sample.

This recommendation is based upon the reason that, the sample of seven Pakistani traders was significantly representing the cotton-type bed linen industry of Pakistan. If the Commission strikes out the three Pakistani traders having *de minimis* dumping margin and bases its calculation on the dumping margin of four traders, it is possible that the new sample of Pakistani traders do not significantly represent the Pakistani industry.

Moreover, there is apparently no significant ground to exclude the *de minimis* dumping margin. It could cause undue disadvantage to competitive traders (not dumping on the Union market at all), or traders having less dumping margin as compared to the average dumping margin as calculated by the EU Commission. Therefore, it is recommended that Article 9(6) of the basic regulation should be amended accordingly, and average dumping margin should be calculated on the basis of average of the whole sample.

## **7.2.8 CALCULATION OF NEGATIVE DUMPING MARGIN BY THE COUNCIL AS OPPOSED TO THE POSITIVE DUMPING MARGIN CALCULATED BY THE COMMISSION IN RESPECT OF SAME PRODUCT**

Termination of measures by the Council following the emergence of negative dumping margin for all six exporters of Pakistan established how fatal the consequences of AD measures may be if investigation is conducted improperly. It is also contended that the EU Council took almost five years to rectify the erroneous calculations as done by the Commission in Council regulation (EC) 1069/97, however, the measures were almost due to expire on completion of the specified term of five years. It may be argued that if the WTO panel had not declared the practice of zeroing as inconsistent with the spirit of the WTO Agreement, the textile industry of Pakistan might continue to suffer unfair measures.

It is also found that Pakistan's textile industry was put under undue disadvantage, as they had to pay unfair AD duty with the rate of 6.5% on their exports to the Union for a prolonged period. However, the WTO Agreement should be reformed to completely block the practice of zeroing as, more than EU some other jurisdictions are practicing it.

## **7.2.9 SECTION 3.4**

### **7.2.9.1 USE OF “ZEROING” AGAINST THE SPIRIT OF BASIC REGULATION**

In Section 3.4, it is found that, unfair practice of zeroing was used as it was used in section 3.2. It is also found that the Ikea Wholesale, an importer of cotton-type bed linen from Pakistan and India, challenged the Council's regulation (EC) 2398/97. But surprisingly, none of the exporters from Pakistan or associations representing Pakistani textile manufacturers challenged the said regulation in the EU Courts, despite the fact that the use of zeroing, being a controversial practice is very vulnerable to litigation. It is not clear why Pakistani exporters did not

challenge the said regulation, but one of the reasons may be the expensive litigation involved. To conclude, it could be said that this investigation was conducted unfairly by the Commission, as usage of zeroing practice by the Commission finds no basis from the basic regulation.

**7.2.9.2 IN ARTICLE 2(6) THE PLURAL PHRASE ‘OTHER EXPORTERS OR MANUFACTURERS’ SHOULD BE REPLACED WITH A SINGULAR PHRASE**

Secondly, it is recommended that Article 2(6) of the basic regulation should be amended. The use of plural phrase, ‘other exporters or manufacturers’ should be replaced with the singular phrase. It may cause serious difficulty for the EU Commission where only single exporter’s data regarding its SG&M cost and profit margin could be considered as within the ordinary course of trade and it is noted that the Commission has to encounter such circumstances frequently. However, in cases where investigative bodies have to rely on the data provided by a single entity, extensive responsibility lies on them to verify single sourced data with available possible sources.

**7.2.10 SECTION 3.5**

**7.2.10.1 PROVISION OF MISLEADING INFORMATION BY PAKISTANI EXPORTERS LEADS TO THE ERRONEOUS CALCULATION OF NORMAL VALUE AND DUMPING MARGIN FOR THEM**

In Section 3.5, it was concluded that the information regarding profit margin as provided by Pakistani traders was misleading and erroneous. The deep analysis of facts by the EU Commission revealed that Pakistani traders were earning almost 1.6% average profit margins on the sale of like product in the domestic market. However, on the other hand the average profit margin on the sale of product concerned was reported by Pakistani exporters to be around 30% of the sales price.

It was found that EU Commission's findings regarding grouping of unbleached cotton-type bed linen and dyed bed linen was duly according to the meaning of Article 1(4) of the Council Regulation (EC) 384/96. It provides that in the absence of identical product, a product having significantly similar characteristics to the product concerned can also be considered as a like product.

#### **7.2.10.2 A SPECIFIC REPRESENTATIVE THRESHOLD IS NECESSARY FOR FAIR SAMPLING OF FOREIGN EXPORTERS**

It was found that the sample of Pakistani traders as created by the EU Commission was having only 32% production share in the textile industry of Pakistan, which is insufficient, according to the author. Although Article 17(1) of the basic regulation only requires that a sample should represent a major proportion of the industry of the country under investigation, it does not, however, prescribe a specific threshold in this regard. It is unjust to calculate dumping margin for 68% of Pakistan's textile industry on the basis of misleading information provided by 32% of Pakistani traders. Therefore this dissertation recommends that Article 17(1) of the basic regulations should specifically provide a threshold of representation for creation of a sample, it may be 50%.

Further, it is found that, as the traders included the sample furnished misleading information regarding their profit margin and SG&A costs, as an alternative under Article 17(4) of the basic regulation the EU Commission may create a fresh sample. Although, it is a discretionary power of the Commission, and thus cannot be claimed as a matter of right, however, this step can be taken in order to ensure fair investigation. Similarly, within the meaning of Article 16(2) considering the incomplete and defective verification visits at the premises of only two Pakistani traders, the EU Commission as a matter of discretion might have decided to complete the rest of the verification visits in a third country.

### **7.2.10.3      CALCULATION OF AVERAGE DUMPING MARGIN FOR SAMPLED EXPORTERS IS AGAINST THE SPIRIT OF ARTICLE 17**

It was established that the EU Commission made a manifest error of assessment by calculating average dumping margin with the rate of 13.1% for all Pakistani traders regardless of whether they were cooperating or non-cooperating. Similarly, the Commission unnecessarily made recourse to the average sales general and administrative costs. However, Article 17(3) of the basic regulation clearly demands to calculate individual dumping margin for all participating exporters. The average dumping margin can only be calculated for the non-cooperating traders, thus the Commission acted against the spirit of Article 17(3) of the basic regulation.

It is also concluded that the Pakistani traders' plea to calculate individual dumping margin was unduly rejected on the basis of the argument that absence of concrete information about profit margin and cost of production led to the calculation of average dumping margin.

Lastly, it could be contended that in March 2002 the EU Council, by means of Council Regulation (EC) 160/2002, terminated the previously imposed AD duty through Commission Regulation (EC) 1069/97, as the EU Commission applied 'Zeroing'. Therefore, the Council had to review its calculation of dumping margin, as use of 'Zeroing' was declared void by the WTO panel. However, through review investigation (Council Regulation (EC) 160/2002, the Council terminated the existing measures as, excluding the zeroing practice, it found negative dumping margin for all Pakistani exporters.

Therefore it is understandable that after a few months in September 2002, the EU Commission on the complaint of European Federation of the Cotton and Allied Textile Industries (Eurocoton) once again initiated investigation of alleged dumping of same product (cotton-type bed linen), and concluded it with calculation of positive dumping margin with a rate of 11.3% of the export price. The researcher, however, found both actions of the EU institution (at the first



instance termination of duty and initiation of fresh investigation) inconsistent with each other.

#### **7.2.11 LESSER RATE OF DUTY CALCULATED BY THE COUNCIL IN REVIEW INVESTIGATION**

In Section 3.6, it was found that as in the original investigation the sample of Pakistani exporters was insufficiently representative, accounting for only 35% of the total production of Pakistan's textile produce, however in the review investigation, the representative size of the sample further curtailed, accounting for only 31% of Pakistan's unbleached bed linen industry. It is also found that, unlike use of 'zeroing' in a previous investigation regarding alleged dumped imports of same product in the Community (council regulation (EC) 1069/97), in the current investigation the EU Commission has declined the request of Community producers to consider only profitable transactions for the purpose of calculation of normal value.

Secondly, the outcome of the review investigation confirmed that investigation of the Commission in the original investigation was vague, based on incomplete and unreliable information. The average dumping margin calculated in the review investigation was found to be 5.8% of export price, which is almost half the average dumping margin calculated in the original investigation at the rate of 13.1%.

Therefore, it is established that provision of misleading information regarding profit margin and normal value by sampled exporters and incomplete verification visits cause undue advantage to at least those non-sampled exporters accounting for more than 65% of production, as they had to pay an extra 7.2% AD duty on their exports for a period of almost two years.

## **7.2.12 FAILURE TO GIVE ADEQUATE STATEMENT OF REASONS**

In Section 4.1, it was concluded that the Commission has omitted to state the exact representative threshold of 21 Union producers supporting the initiation of proceedings. Thus, it is not sufficient to state the number of Union producers supporting the complaint, instead the Commission is expected to reveal the representative value of supporters of the complaint, as if the prescribed threshold of representation is not met, the interested parties may challenge the initiation of investigation.

Regarding comparability of product concerned and like product, it is difficult for an outsider to decide if the product concerned and like product sold in the national market were comparable, as the Commission established their comparability on the basis of having parallel characteristics. Due to the non-availability of any unfailing scale to judge the resembling characteristics, this is however the area where the Commission enjoys inclusive discretion to decide according to the circumstances of each case, and occasionally it may incline to change the result of the investigation.

Moreover, it was found that the domestic sale of one trader was found to be in ordinary course of business and representative of export sale; the Commission however, did not calculate the normal value on the basis of actual price paid on domestic market, as the sale of only one type of product concerned was representative. Therefore, in accordance with Article 2(4), the Commission used the profit margin incurred (by one trader) on one type of the product concerned to construct the normal value (for the same trader and three other traders whose domestic sale was found to be insufficient) of whole product concerned.

Lastly, it is also determined that in this inquiry both the EU Commission and the Council interpreted or evaluated Community interest differently, as the proposal of the EU Commission to impose definitive duty with the average rate of 32% of export price could not be approved in the Council due to dearth of majority vote. To conclude, it could be said that there is no precise definition of Community

interest, as it was found to be interpreted differently by the institutions and Judicature. However, the definition and pre-requisites of Community interest test need to be more tightened in order to block its arbitrary interpretation.

#### **7.2.13 THE GENERAL COURT AND EU COURT OF JUSTICE INTERPRETS ‘REVIEWABILITY OF FAILURE TO ADOPT DEFINITIVE MEASURES’ INCONSISTENTLY**

In Sections 4.2 and 4.3, it was found that the General Court and the EU Court of Justice adopted an inconsistent approach towards the issue of reviewability of failure to adopt definitive AD measures due to the lack of a simple majority in the EU Council.

The researcher concludes that the judgement of the General Court was more rational and logical, as it established that failure to adopt definitive measures is a legislative act of the Council, and it could not be reviewed judicially, as the investigation, of the EU Commission could be reviewed. The Council is the forum where member states attempt to secure their national interest by using their available voting rights. If the simple majority of member states do not support a particular proposal of the Commission, it could not be adopted. It could be asserted that the lack of majority in the Council speaks itself for its actions, as the majority vote in favour to refrain from adoption of AD measures establishes that adoption of such measures is not in the Community interest. The lack of consistent approach to reviewability of Council’s acts needs to be addressed. The EU institutions however, need to frame new guidelines about it.

#### **7.2.14 IN TWO DIFFERENT INVESTIGATIONS THE COMMISSION CALCULATED INCONSISTENT DUMPING MARGIN IN RESPECT OF SAME EXPORTERS EXPORTING SAME PRODUCT**

In Section 4.4, it was noted that in both inquiries the same Pakistani cooperative traders were encompassed in the sample. However, the Commission calculated considerably fluctuating dumping margins for them under both investigations. For

the Nishat group of industries, the dumping margin was meaningfully increased from 17% to 32.5% in the later investigation. In the same way for Kohinoor industries, the dumping margin was reduced from 30% to 11.7%. This radical upsurge and decline of dumping margin for the same traders in a narrow time period also raises questions about the uniformity of the Commission's calculation method.

It is noted that just two months after the expiration of the 15 month deadline to embrace definitive measures, the Commission introduced a fresh investigation. However, just as the former proposal of imposition of definitive duty was failed, the present proposal also lapsed due to the absence of a simple majority in the Council supporting the imposition of definitive duty. In the present case, the 15 month deadline ended on 11 October 1998. This thesis suggests that, in case of failure of an attempt to impose ADD, if the circumstances do not change considerably, there must be minimum time frame when second investigation could be initiated. It would help to restrict the oppression of competitive foreign imports.

#### **7.2.15 INCONSISTENT INTERPRETATION OF 'OTHER KNOWN FACTORS' MADE BY THE GENERAL COURT AND THE EU COURT OF JUSTICE**

In Chapter 5, it was found that the General Court and the EU Court of Justice interpreted Article 3(7) of the basic regulation differently. The General Court held that grant of GSP status to Pakistan and removal of previous AD duty were the other known factors within the meaning of Article 3(7). Thus, the EU Commission must separate the injury caused due to the other known factors (in this case grant of GSP status) from injury being caused due to dumped imports from Pakistan. The Court further established that the list of other known factors provided in Article 3(7) is suggestive and explanatory thus should be used for guidance purpose only.

However, the EU Court of Justice established that legislative amendments or grant of GSP status cannot be considered other known factor having any direct link with

the conduct of the Union industry. The EU institutions are, however, required to analyse only those other known factors having a direct effect on the conduct of the Union market. In this case, however, the effect of legislative amendment and grant of GSP status should be considered on the dumped imports themselves. However, the researcher found that within the meaning of Article 3(7) of the basic regulation, the legislative amendments is a separate known factor which was directly affecting the Union market; hence EU institutions were expected to conduct non-attribution analysis in this regard.

As both grant of GSP status to Pakistan and withdrawal of previously imposed AD duty on Pakistan originated from EU institutions, therefore it could not be argued that it could not affect the conduct of the Union market. Instead, the consequences of preferential tariff access to Pakistan were already known by the EU Commission, that it will significantly help to increase trade flow from Pakistan. However, concluding it could be argued that the generality and vague scope of Article 3(7) leads to the multiple interpretations drawn by the institutions. Thus it is recommended that it should provide a comprehensive list of other known factors which need to be considered during causal link analysis.

### **7.3 LIMITATIONS OF THIS RESEARCH**

In order to analyse the considerations of the member states for their specific voting trends for or against the imposition of the duty on Pakistan, requests for access to data were sent to 28 member states (as Croatia joined in 2013). However, access was given by only two member states; six member states declined the request, citing confidentiality of information, while others did not reply. The outcome would have been more trustworthy if at least half of the member states had replied, but there was no alternative source to get the same information. It does not, however, affect the health of this project, as overwhelmingly it relies upon analysis of the Commission's investigations as provided by its regulations and dictum of judges as mentioned in judgements of the Courts.

Secondly, before transfer stage the researcher travelled to Pakistan to evaluate the situation at ground by interviewing government officials of Pakistan and representatives of the textile industry of Pakistan. The researcher decided not to use them in the thesis, as the data generated from these interviews lacks in terms of quality and relevance.

Thirdly, it involves a lot of expense to interview all the stakeholders including European importers, exporters, associations representing European importers and exporters, Pakistani manufacturers, EU Commission representatives, and AD law experts based in Brussels. It does not, however, affect the viability of this project, as the Council's and Commission's notices, regulations, decisions, corrigenda and judgements of the General Court and EU Court of Justice significantly helped to evaluate the consistency of EU institutions to implement and interpret their AD law in relation to Pakistan, as well as the voting patterns obtained from the institutions.

#### **7.4 FUTURE PROSPECTS OF THE RESEARCH**

The EU's application of its safeguard measures with respect to Pakistan is an area which has been rarely explored before; hence it offers multi-dimensional key areas which could be further studied. The researcher, however, intends to study the effectiveness of EU institutions about their application of anti-subsidy measures against Pakistan in future. Similarly, the application of AD and/or anti-subsidy laws by Pakistan against European exporters may also be a good area to be explored. Comparative analysis of the EU's and Pakistan's AD laws may be conducted, to evaluate their conformity with the WTO agreement.

Moreover, the application of their safeguard measures by other south Asian economies (Bangladesh and India) against imports from EU or vice versa also calls for significant attention. Another possible projection for future research may be to investigate the co-relation between the geographical existence of Union industry and the voting trends of the concerned states for adoption or termination of Commission's proposal to adopt definitive measures. Similarly, the influence of gigantic member states (having numerous voting rights) and of small member

states (having few voting rights in the Council) on decisions of the Council to adopt or terminate the Commission's proposal can also be viable area to examine.

## 7.5 CONCLUDING THOUGHTS

This dissertation was aimed to observe the consistency of EU institutions in implementation of their AD law with respect to Pakistan. An in-depth analysis of all investigations conducted by the EU Commission regarding alleged dumped imports from Pakistan was done by the researcher. This dissertation, however, figured out many occasions where AD procedures were lacking consistency and clarity.

One of the key examples is the practice of 'zeroing' as carried out by the EU in respect of investigations about alleged dumped imports of cotton-type bed linen from Pakistan and India, which was later declared by the General Court to be out of the scope of the basic regulation, or initiation of investigation by the Commission (Commission regulation (EC) 1470/2001)<sup>1</sup> despite the fact that the complaint was not being supported by 50% of the Union producers of the product concerned. Similarly, calculation of weighted average dumping margin while excluding *de minimis* dumping margin, comparability of the like product and product concerned, causal link, calculation of normal value and the community interest test are other areas where the Commission was found to be acting inconsistently.

With respect to Community interest, it is found that the interest of the Union's producers mostly prevails over the interest of importers or consumers. One of the possible reasons may be that the Union exporters are associated, thus in a better position to safeguard their interest, while the importers' and consumers' interest is found to be vulnerable as they are separate.

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<sup>1</sup> Council Regulation (EC) No 1470/2001 of 16 July 2001 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China [2001] OJ L 195/8

The European Courts are found to show restraint in AD disputes, as on many occasions the Courts reiterated that, due to the complex economic and commercial observations involved, the institutions have wide discretion to decide according to varying circumstances of the case; the Court's jurisdiction is however; restricted to analysing whether institutions are acting upon the express provisions of the basic regulation. The EU Courts have commonly used the phrase 'complex economic and commercial calculations'; however, they have rarely defined it. It seems that sometimes they plainly decline the reviewability of institutions' actions without assessing the actual nature of the calculations involved.

Although this phrase has widespread application in the EU's case law; appraisals of 'complex economic assessments' is not required in the majority of cases. Mostly the issues are not related to the erroneous calculations of the investigative authority; instead, it is about the fair interpretation and application of relevant provisions of the basic regulation, where they are unclear. Although the EU Courts have acknowledged wide discretion of the administrative institutions, it is not clear where the courts draw a line between reviewable and non-reviewable matter. Even if such a criterion is established their application is found to be arbitrary.

The conduct of the courts, as established by their decisions, reveals that where the EU Courts are fluent in their review of procedural issues, they are reluctant in substantial issues. However, analysis of investigations as discussed in this thesis reveals that, in AD cases, these are only substantial issues which are mostly the bone of contention among interested parties.

However, procedural matters are comparatively rarely found to be challenged. In the case of ADDs imposed on Pakistan, controversies revolved around purely substantive issues: e.g. calculation of constructed normal value, causal link, Union industry and zeroing etc. However, apart from the use of 'zeroing', the EU Courts have reviewed the actions of the investigative authorities when they are challenged by aggrieved parties, although at various occasions within those



reviews the courts limited the scope of review. In the case of ‘zeroing’, however, the EU Courts moved only after the WTO Appellate Panels’ decision.

It is also found that on many occasions the General Court and EU Court of Justice interpreted the provisions of the basic regulation differently. For example the interpretation of other known factors as made in *Gul Ahmed v Council*, and similarly the interpretation of Union industry (50% supporting initiation of investigation) as made in Case T- 469/07.

The brief overview of cases as discussed in Chapters 2, 3, 4 and 5 reveals that comparatively, the findings of the General Court are found to be steadier. On the other hand, sometimes the judgements of the EU Court of Justice are found to be debatable, as in Case C-638/11 (about other known factors) and Case C-76/01 (about statement of reasons for failure to adopt the Commission’s proposal due to lack of a simple majority in the Council). In the view of this author, it is also established that the EU Courts, by their judgements and interpretations, rendered powers to the investigative institutions which were not provided by the basic regulation.

Overall analysis of all investigations conducted related to Pakistan reveal a mixed trend. Some investigations are found to be totally consistent with the concerned provisions of the basic regulation. However, sometimes the findings of the Commission are found to be inconsistent with the observations of the Council, or in some cases the findings of both Council and Commission are found to be inconsistent with the case law (i.e., the judicial verdict).

The researcher, however, has established that a few ambiguous provisions of the basic regulation (for example the interpretation of Article 3(7) as discussed in Case T-199/04) tend to offer inconsistent interpretations and meanings drawn by the institutions. Furthermore, analysis of a few investigations of the Commission and judgements of the EU Court of Justice revealed a few instances whereby the EU institutions were found to be acting totally against the letter and spirit of the applicable provisions of the basic regulation.

Concluding, it could be established that the efficacy of EU AD law is mostly jeopardised due to the inconsistent interpretations (of the provisions of the basic regulation) drawn by the institutions (Commission, Council and Judicature), while in some cases they are found to be acting beyond the express provisions of the law (for example zeroing). The effective implementation of the basic regulation could however be assured by eliminating its ambiguous provisions, and by incorporating active judicial review of the investigations.

But it can be presumed that the wide discretionary and ambiguous provisions of the basic regulation, the WTO Agreement or other national AD frameworks are incorporated on purpose. As it has been argued before that use of AD measures is more politically oriented as compared to competition oriented. Therefore, these ambiguous provisions help the investigative bodies to manoeuvre their application as the circumstances of each case require. It is important to note that today AD Statutes are being used strategically by the majority of WTO members.

Another reason for the inconsistent conclusions drawn by the Commission and the Council related to the need of imposition of AD measures could be the difference of institution's capacity, scope and policy making. The Commission purely being the administrative institution has been favouring more rigorously the imposition of ADD; as in comparison to the Council it has been calculating the higher dumping margins for the exporters. It is comprised of 28 commissioners, one from each member state who is supposed to look at their own interest through the lens of Union interest. Therefore, unlike the Council, the Commission used to draw conclusions based upon the significant technical details.

The Council of the European Union unlike the Commission is not an administrative institution instead; it is more political forum where the will of the European Union speaks through simple majority or qualified majority. The decisions of the Council are more vulnerable to the national interests of the member states as compared to the Commission. Although it is found that different stakeholders especially the Union manufacturers can influence the decision making process of both institutions but it is more frequent and systematic in case

of the Council. However as far as judicature is concerned, the frequent inconsistency in their judgements is unexplained as unlike the Commission and the Council both the general court and the EU Court of Justice have shared judicial policy, i.e., the interpretation of the questioned provision of the basic regulation.

It is established that AD duties are not always applied on economic grounds; instead they sometimes also originate from political and strategic motives. The majority of the fair application issues raised in this thesis are not confined to the basic regulation, but extend to the WTO Agreement as well, as the basic regulation derives its authority from the international framework. However, sometimes the national AD frameworks evolve some powers which were not granted by the WTO Agreement, e.g. 'zeroing'. Therefore, the issues related to the EU AD law can be classified in three categories: one expressly originating from the WTO Agreement; the second evolving due to diverging interpretations of the WTO Agreement thanks to its vague provisions, and the third expressly evolved by national AD frameworks without a basis in the international rules.

Therefore, in order to address issues related to the fair and consistent use of the EU AD law, the text of both the basic regulation and the WTO Agreement need to be tightened. Those provisions which allow the investigative bodies to manoeuvre the scope of an AD investigation should be reviewed. It is found that institutions enjoy wide discretion in defining 'product concerned' and 'like product'. The other controversial areas which have been usually subject to judicial review include: calculation of constructed normal value, calculation of average SG&A costs and reasonable profit margin.

The definition of Union industry is also problematic, as the institutions have defined it in various ways in different investigations. Similarly, it is argued that the EU Commission's assessment of 'fair comparison', and adjustments to normal value and export price, are also arbitrary.

Similarly, the Commission widely uses its discretion in terms of calculation of dumping margin, community interest, in the ordinary course of trade test,

sampling and non-attribution analysis. These discretionary powers, however, were found to be mostly used in favour of the Union and rarely in favour of foreign exporters. This dissertation, however, establishes that although unrestricted powers are necessary for the institutions in some circumstances, extensive use of discretionary powers challenges the uniformity and consistent use of safeguard measures.

Keeping in view the international perspective and practices related to imposition of ADDs, it could not be established that the EU is inconsistent in its application of safeguard measures related to Pakistan. Also, it could not be claimed that the EU put Pakistan at a comparative disadvantage as compared to other similar developing economies. Conversely, it could be established that the application of AD measures are now imposed with mixed economic, competitive and strategic objectives as opposed to pure economic motives. Thus it is not the EU to be singled out from the international framework and blamed for its inconsistencies.

In respect of the retaliation approach, some researchers have found it one of the important reasons for the imposition of measures. Pakistan may also have used and imposed AD measures on the EU's imports without an economic rationale, for example, in response to 13 AD investigations initiated by the EU against Pakistan, Pakistan also initiated 10 AD investigations against the EU. In a larger context, the EU's AD practices are also less questionable when one consumes the lesser extent to which the EU makes use of the AD mechanism. In comparison to the size of the market, the EU has been an infrequent user of safeguard measures as compared to other similarly sized markets, e.g. the USA and the India.

The second research question of this thesis aimed to analyse the rationale of member states for their specific voting decision in the Council. It is established that trade partner allegiance is not found to be the motivation for specific voting trends of the EU member states. Their voting styles, however, were found to be connected with their consent to or dissent with the findings of the Commission. Sometimes the member states are found to be unconvinced by the calculation of material injury caused to the Union industry, likewise they also found to be

challenging the non-attribution analysis (segregating injury caused by other known factors from injury caused by alleged dumped imports) as conducted by the Commission.

The most common and noteworthy reason to vote 'NO' to the Commission's proposal to adopt definitive measures is found to be varying Community (Union) interest calculation by the Commission and the member states. The two member states, however, were found to have contrasting reasons for arguing that imposition of measures will cause unreasonable expense for buyers. The geographical presence of Union industry complaining about suspected dumped imports is also an important conclusive factor for the voting of member states. As the Union's textile industry is concentrated in Spain, Italy, Greece and Portugal; therefore it has been noted that the aforementioned member states have been supporting AD measures on imports of cotton-type bed linen originating from Pakistan. The other member states however, showed mixed trend.

It was found that two groups of member states within the European Union had consistently differing styles of voting. The member states like the UK, the Netherlands, Denmark, Sweden and Finland have been mostly opposing the application of safeguard measures against Pakistan. However, the other group of member states, which is relatively large and mostly led by France, Germany, Spain and Italy, is found to be supporting the imposition of measures. An almost similar style of voting in these two groups has been found through voting on all the Commission's proposals for adoption of definitive measures, starting from 1996.

A diversified tendency was found about the effect of imposition of duties on course of imports from Pakistan. Occasionally the imports of concerned products are found to be growing over the duty period, though the proportion of surge is noted to be minimal. In the bulk of cases it is established that imposition of duty held down the level of imports at a persistent point (the import size is found to be same as it was five years before). Nevertheless, in some cases it is found that the imposition of AD duty considerably depreciated the scale of imports from

Pakistan to the EU. Therefore, it could be proclaimed that imposition of AD duty on imports of concerned goods originating from Pakistan has generally affected the scale of imports from Pakistan, although, there are some exemptions.

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Case T 304/11 *Alumina d.o.o. v Council of the European Union* [2013] OJ C 226

Case T-156/11 *Since Hardware (Guangzhou) Co., Ltd v Council of the European Union* [2011] OJ C 120

Case T-556/10 *Novatex Ltd v Council of the European Union* [2011] OJ C 30

Case T-555/10 *JBF RAK LLC v Council of the European Union* [2011] OJ C 30

Case T-297/10 *DBV Deutscher Brennstoffvertrieb Würzburg GmbH v European Commission* [2010] OJ C 246

Case T-269/10 *LIS GmbH Licht Impex Service v European Commission* [2010] OJ C 234

Case T-158/10 *The Dow Chemical Company v Council of the European Union* [2010] OJ C 161

Case T-134/10 *Fédération européenne de l'industrie du sport (FESI) v Council of the European Union* [2010] OJ C 148

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Case T-528/09 *Hubei Xinyegang Steel Co. Ltd v Council of the European Union* [2010] OJ C 51

Case T-423/09, *Dashiqiao Sanqiang Refractory Materials Co. Ltd v Council of the European Union* [2011] ECR II-08369

Case T-406/09, *Donau Chemie AG v European Commission* [2014] OJ C 202

Case T-172/09 *Gem-Year Industrial Co. Ltd and Jinn-Well Auto-Parts (Zhejiang) Co. Ltd v Council of the European Union* [2009] OJ C 153

Case T-170/09 *Shanghai Biaowu High-Tensile Fasteners Co. Ltd and Shanghai Prime Machinery Co. Ltd v Council of the European Union* [2009] OJ C 153

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Case T-459/08 *EuroChem Mineral and Chemical Company OAO (EuroChem MCC) v Council of the European Union* [2008] OJ C 237

T-369/08 *European Wire Rope Importers Association (EWRIA) and others v European Commission* [2011] ECR II-6283

Case T-235/08 *Acron OAO and Dorogobuzh OAO v Council of the European Union* [2008] OJ C 209

Case T-192/08 *Transnational Company 'Kazchrome' AO and ENRC Marketing AG v Council of the European Union* [2011] ECR II-07449

Case T-190/08 *Chelyabinsk electrometallurgical integrated plant OAO (CHEMK) and Kuzneckie ferrosplavy OAO (KF) v Council of the European Union* [2011] ECR II-7359

Case T-107/08 *Transnational Company 'Kazchrome' AO and ENRC Marketing AG v Council of the European Union and European Commission* [2011] ECR II-08051

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Case T-274/07 *Zhejiang Harmonic Hardware Products Co. Ltd v Council of the European Union* [2011] ECR II-00377

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Case T-410/06 *Foshan City Nanhai Golden Step Industrial Co., Ltd v Council of the European Union* [2014] ECR II-0879

Case T-409/06 *Sun Sang Kong Yuen Shoes Factory (Hui Yang) Corp. Ltd v Council of the European Union* [2010] ECR II-0807

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Case T-314/06 *Whirlpool Europe Srl v Council of the European Union* [2010] ECR II-05005

Case T-296/06 *Dongguan Nanzha Leco Stationery Mfg. Co., Ltd v Council of the European Union* [2009] ECR II-0166

Case T-249/06 *Interpipe Nikopolsky Seamless Tubes Plant Niko Tube ZAT (Interpipe Niko Tube ZAT) and Interpipe Nizhnedneprovsky Tube Rolling Plant VAT (Interpipe NTRP VAT) v Council of the European Union* [2009] ECR I-01335

Case T-143/06 *MTZ Polyfilms Ltd v Council of the European Union* [2009] ECR II-04133

Case T-115/06 *Fiskeri og Havbruksnæringens Landsforening and Others v Council of the European Union* [2006] OJ C 143

Case T-113/06 *Marine Harvest Norway AS and Alsaker Fjordbruk AS v Council of the European Union* [2006] OJ C 131

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Case T-413/03 *Shandong Reipu Biochemicals Co. Ltd v Council of the European Union* [2006] ECR II-02243

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Case T-164/94 *Ferchimex SA v Council of the European Union* [1995] ECR II-2681

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Case C-358/89 *Extramet Industrie SA v Council of the European Communities* [1992] ECR I-3813, Opinion of AG Jacobs

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## **APPENDIX I: LETTERS WRITTEN TO THE EU COMMISSION FOR ACCESS TO THE VOTING TRENDS OF MEMBER STATES**

01 April 2015

**The Secretariat-General**

**European Commission**

Unit SG/B/2 "Openness, access to documents, relations with civil society"

B-1049 Brussels

Belgium

Dear Sir/Madam,

**Re: Request under Regulation 1049/2001 of 30 May 2001 for access to documents relating to EU Council's voting patterns in respect of following unsuccessful proposals of EU Commission (bearing lack of simple majority in the Council) to adopt definitive AD duty against Pakistan**

Please could you supply me with any background documents pertaining to the EU members voting trends through following mentioned EU Commission's proposals for adoption of definitive AD measures?

- Council Regulation (EC) No 397/2004 of 2 March 2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan
- (EC) No 695/2006 of 5 May 2006 amending Regulation (EC) No 397/2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan
- Council Regulation (EC) No 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan
- Council Regulation (EC) No 160/2002 of 28 January 2002 amending Council Regulation (EC) No 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan, and terminating the proceeding with regard to imports originating in Pakistan

- Council Regulation (EC) No 1205/2007 of 15 October 2007 imposing anti-dumping duties on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 and extending to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines
- Council Regulation (EC) No 1467/2004 of 13 August 2004 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of polyethylene terephthalate originating in Australia, the People's Republic of China and terminating the anti-dumping proceeding concerning imports of polyethylene terephthalate originating in Pakistan and releasing the amounts secured by way of the provisional duties imposed
- Council Regulation (EC) No 866/2005 of 6 June 2005 extending the definitive anti-dumping measures imposed by Regulation (EC) No 1470/2001 on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines

Documents in English are preferable; please send them to me at my email address [bilalyzm@yahoo.com](mailto:bilalyzm@yahoo.com)

Please do not hesitate to contact me if you need any further specificity with regard to the search.

Thanking you in advance for your kind assistance.

Yours faithfully,

Muhammad Bilal  
PhD Student  
University of Bedfordshire  
Luton, UK

15 October 2015

**The Secretariat-General**

**European Commission**

Unit SG/B/2 "Openness, access to documents, relations with civil society"

B-1049 Brussels

Belgium

Dear Sir/Madam,

**Re: Request under Regulation 1049/2001 of 30 May 2001 for access to documents relating to EU Council's voting patterns in respect of following unsuccessful proposals of EU Commission (bearing lack of simple majority in the Council) to adopt definitive AD duty against Pakistan**

Please could you supply me with any background documents pertaining to the EU members voting trends through dismissal of the below mentioned EU Commission's proposals for adoption of definitive AD measures?

- Lapse of Commission's proposal to adopt definitive AD duty after imposing a provisional anti-dumping duty on imports of certain unbleached cotton fabrics originating in the People's Republic of China, Egypt, India, Indonesia, Pakistan and Turkey through Commission regulation (EC) No 773/98 of 7 April 1998
- Lapse of Commission's proposal to adopt definitive AD duty after imposing a provisional anti-dumping duty on imports of unbleached (grey) cotton fabrics originating in the People's Republic of China, Egypt, India, Indonesia, Pakistan and Turkey through Commission Regulation (EC) 2208/96 of 18 November 1996.

Documents in English are preferable; please send them to me at my email address [bilalyzm@yahoo.com](mailto:bilalyzm@yahoo.com)

Please do not hesitate to contact me if you need any further specificity with regard to the search.

Thanking you in advance for your kind assistance.

Yours faithfully,

Muhammad Bilal

PhD Student

University of Bedfordshire, Luton UK

18 October 2015

**The Secretariat-General**

**European Commission**

Unit SG/B/2 "Openness, access to documents, relations with civil society"

B-1049 Brussels

Belgium

Dear Sir/Madam,

**Re: Request under Regulation 1049/2001 of 30 May 2001 for access to documents relating to EU Council's voting patterns in respect of adoption of following Council Regulation**

I am very sorry to bother you again. With reference to my previous email dated 15th Oct could you also please supply me with any background documents pertaining to the EU members voting trends through adoption of definitive AD measures through following Regulation?

- Council Regulation (EC) No 1467/2004 of 13 August 2004 imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of polyethylene terephthalate originating in Australia, the People's Republic of China and terminating the anti-dumping proceeding concerning imports of polyethylene terephthalate originating in Pakistan and releasing the amounts secured by way of the provisional duties imposed.

Documents in English are preferable; please send them to me at my email address

[bilalyzm@yahoo.com](mailto:bilalyzm@yahoo.com)

Please do not hesitate to contact me if you need any further specificity with regard to the search.

Thanking you in advance for your kind assistance.

Yours faithfully,

Muhammad Bilal

PhD Student

University of Bedfordshire

Luton, UK



## APPENDIX II: EU COMMISSION'S REPLY



**Council of the European Union**  
General Secretariat  
Directorate-General Communication and Document Management  
Directorate Document Management  
Transparency and Access to Documents Unit  
*Head of Unit*

Brussels, 15 April 2015

Mr Muhammad Bilal  
Email: bilalyzm@yahoo.com

Ref. 15/0825-csm/nb

Request made on: 01.04.2015

Dear Mr Bilal,

Thank you for your request for access to documents of the Council of the European Union.<sup>1</sup>

We have identified the following documents corresponding to your request for the voting results on the adoption of the identified anti-Dumping Council regulations regarding Pakistan:

1. COUNCIL REGULATION (EC) No 397/2004 of 2 March 2004  
**Document 6178/04**
2. COUNCIL REGULATION (EC) No 695/2006 of 5 May 2006  
**Document 8269/06**
3. COUNCIL REGULATION (EC) No 2398/97 of 28 November 1997  
**Document 12292/97**
4. COUNCIL REGULATION (EC) No 160/2002 of 28 January 2002  
**Document 5076/02**

<sup>1</sup> The General Secretariat of the Council has examined your request on the basis of the applicable rules: Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43) and the specific provisions concerning public access to Council documents set out in Annex II to the Council's Rules of Procedure (Council Decision No 2009/937/EU, OJ L 325, 11.12.2009, p. 35).

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5. COUNCIL REGULATION (EC) No 1205/2007 of 15 October 2007

**Document 13039/1/07 REV 1**

6. COUNCIL REGULATION (EC) No 1467/2004 of 13 August 2004

**Document CM 2964/04**

7. COUNCIL REGULATION (EC) No 866/2005 of 6 June 2005

**Document 9017/05**

Please find attached the documents requested.

Yours sincerely,

Jakob THOMSEN

Enclosures



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 22 January 2002**

**5076/02**

**LIMITE**

**COMER 7**

**"I/A" ITEM NOTE**

From:	Working Party on Trade Questions
To:	Permanent Representatives Committee/Council
No. Cion prop. :	5075/02 COMER 6
Subject :	Anti-dumping Proposal for a Council Regulation amending Council Regulation (EC) N° 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan, and terminating the proceeding with regard to imports originating in Pakistan

1. The Commission has submitted the above proposal for a Regulation to the Council, which is requested to take a decision on it as soon as possible.
2. The Working Party on Trade Questions examined this proposal at its meeting on 22 January 2002. After a lengthy and thorough discussion on the basis of a working document from the French delegation, a majority of delegations could accept this proposal. The Belgian, Spanish, French, Italian and Portuguese delegations, however, have opposed it.
3. The Permanent Representatives Committee is therefore invited to recommend that, as an "A" item on the agenda for its meeting on 28 January 2002, the Council adopt the Regulation as finalised by the Legal/Linguistic experts and set out in document 5077/02 COMER 8, by a simple majority.

5076/02

DGE III

JB/amf

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COUNCIL OF  
THE EUROPEAN UNION

Brussels, 16 August 2004

GENERAL SECRETARIAT

CM 2964/04

ANTIDUMPING  
PROCED

COMMUNICATION

WRITTEN PROCEDURE

Contact : helga.berger@consilium.eu.int  
Tel. : + 32 2 285 75 38  
Fax : + 32 2 285 73 74

Subject : Closure of the written procedure for the adoption of a Council Regulation imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of polyethylene terephthalate originating in Australia, the People's Republic of China and terminating the anti-dumping proceeding concerning imports of polyethylene terephthalate originating in Pakistan and releasing the amounts secured by way of the provisional duties imposed

Delegations and the Commission are hereby informed that the written procedure concerning the adoption of the above act was completed on 13 August 2004 and that the Commission and all delegations agreed to the use of the written procedure.

The majority of the delegations agreed to the adoption of the above act. The Finnish delegation voted against and the Austrian and Hungarian delegations abstained.

Consequently, the Council adopted the above Regulation as set out in 11747/04 COMER 143.\*

\* REV 1 (sl)

CM 2964/04

HB/amf  
DG E III

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COUNCIL OF  
THE EUROPEAN UNION

Brussels, 26 April 2006

8269/06

LIMITE

COMER 82  
ASIE 31  
OC 279

**"I/A" ITEM NOTE**

from:	Working Party on Trade Questions
to:	Permanent Representatives Committee/Council
No. Cion prop. :	8268/06 COMER 81 ASIE 30 + REV 1 (en, fr, de)
Subject :	<b>Anti-dumping</b> Proposal for a Council Regulation amending Regulation (EC) No 397/2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan

**COMMON GUIDELINES**

**Consultation deadline for Bulgaria and Romania: 02.05.2006**

1. The Commission submitted the above proposal for a Regulation to the Council on 5 April 2006.
2. Delegations were consulted on this proposal (see CM 1340/06). The majority of delegations agreed with the proposal. However, the Czech, Greek, Spanish, Lithuanian, Polish and Portuguese delegations were against it.
3. The Permanent Representatives Committee is therefore invited to recommend that, as an "A" item on the agenda for its meeting on 5 May 2006, the Council adopt the Regulation as finalised by the Legal/Linguistic experts and set out in document 8270/06 COMER 83 ASIE 32 OC 280.

8269/06

DG E II

JV/lis

**LIMITE EN**

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COUNCIL OF  
THE EUROPEAN UNION

Brussels, 27 May 2005

9017/05

COMER 57  
OC 291

**"I/A" ITEM NOTE**

from: Working Party on Trade Questions  
to: Permanent Representatives Committee/Council

No. Cion prop. : 9016/05 COMER 56

Subject : **Anti-dumping**  
Proposal for a Council Regulation extending the definitive anti-dumping measures imposed by Council Regulation (EC) No 1470/2001 on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines

**COMMON GUIDELINES**

**Consultation deadline: 03-06-2005**

1. The Commission has submitted the above proposal for a Regulation to the Council, which is requested to take a decision on it as soon as possible.
2. All delegations have accepted this proposal (see CM 1807/05).
3. The Permanent Representatives Committee is therefore invited to recommend that, as an "A" item on the agenda for its meeting on 6 June 2005, the Council adopt the Regulation as finalised by the Legal/Linguistic experts and set out in document 9019/05 COMER 58 OC 292.

9017/05

DG E III

JV/ACZ

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COUNCIL OF  
THE EUROPEAN UNION

Brussels, 5 October 2007

13039/1/07  
REV 1

LIMITE

ANTIDUMPING 60  
COMER 153  
CHINE 32  
ASIE 74

"I/A" ITEM NOTE

from : Working Party on Trade Questions

to : Permanent Representatives Committee/Council

No. Cion prop. : 13037/07 ANTIDUMPING 59 COMER 152 CHINE 31 ASIE 73

Subject : **Anti-dumping**  
Proposal for a Council Regulation imposing anti-dumping duties on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 and extending to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines

1. On 18 September 2007, the Commission submitted the above proposal for a Regulation to the Council, which is requested to take a decision in good time to enable the Regulation to be published on 17 October 2007. This proposal involves extending the imposition of the duties for one year.
2. Delegations were consulted on this proposal (see CM 2978/07). Twelve delegations (Belgium, Czech Republic, Denmark, Estonia, Finland, Ireland, Latvia, Malta, the Netherlands, Slovenia, Sweden and United Kingdom) rejected it, whereas fifteen delegations (Austria, Bulgaria, Cyprus, Germany, Greece, France, Hungary, Italy, Lithuania, Luxemburg, Poland, Portugal, Romania, the Slovak Republic and Spain) abstained.

13039/1/07 REV 1

DG E II

ACZ/yd  
LIMITE EN<sup>1</sup>



COUNCIL OF  
THE EUROPEAN UNION

Brussels, 20 February 2004

6178/04

LIMITE

COMER 19  
OC 105

**"I/A" ITEM NOTE**

from: Working Party on Trade Questions

to: Permanent Representatives Committee/Council

No. Cion prop. : 6177/04 COMER 18

Subject : **Anti-dumping**

Proposal for a Council Regulation imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan

**COMMON GUIDELINES**

**Deadline for consultations: 27-02-04**

1. The Commission has submitted the above proposal for a Regulation to the Council which is requested to take a decision on it as soon as possible.
2. A majority of delegations have no objection to this proposal (see CM 568/04). The Danish, Finnish, Netherlands, Swedish and United Kingdom delegations, however, have opposed it.
3. The Permanent Representatives Committee is therefore invited to recommend that, as an "A" item on the agenda for its meeting on 1 March 2004, the Council
  - adopt the Regulation as finalised by the Legal/Linguistic experts and set out in document 6179/04 COMER 20 OC 106, by a simple majority.
  - enter in its minutes the statement set out in Annex.

6178/04

DG E III

JB/amf

1  
**EN**



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ANNEX

**Statement by the Commission to the Council minutes**

**Subject: Anti-dumping proceeding concerning imports of cotton-type bed linen originating in Pakistan – PE/243/2004 – COM(2004)110**

In the framework of the present investigation, the Commission proposes the imposition of anti-dumping measures pursuant to Council Regulation (EC) No 384/96 ("basic Regulation"). Due to a life-threatening letter addressed to the case-handlers, the on-spot verifications in Pakistan had to be interrupted and the Commission had to make a determination on dumping on the basis of facts available, in line with Article 18 of the basic Regulation.

However, the Commission intends to initiate without delay a review of the measures on the basis of article 11(3) of the basic Regulation as far as the situation of dumping is concerned, if and when there is evidence that the specific threat to the case handlers in the framework of this proceeding is removed. For such a review, full co-operation of the Pakistani side would be necessary.

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3. Pursuant to Article 9(4) of the Basic Anti-dumping Regulation (EC) No 384/96 of 22 December 1995, as last amended by Regulation (EC) No 2117/2005 <sup>1</sup>, the proposal shall be adopted by the Council unless it decides by a simple majority to reject it.
4. The Commission agreed on the following technical amendment to the citation of the legal basis <sup>2</sup>:
- Instead of: "Articles 4(1), 5(4), and 11(2)"
- Read: "Articles 9 and 11(2)" .
5. In light of the above and taking into account the above amendment, the Permanent Representatives Committee is therefore invited to recommend that the Council, as an "A" item on the agenda for its meeting on 15 October 2007,
- adopt the Regulation as finalised by the Legal/Linguistic experts and set out in document 13040/1/07 ANTIDUMPING 61 COMER 154 CHINE 33 ASIE 75 + REV 1,
  - enter into its minutes the statements set out in the attached ANNEX.

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<sup>1</sup> OJ L 340, 23.12.2005, p. 17.

<sup>2</sup> Articles 9 and 11(2) also were the legal bases for Council Regulation (EC) No 1583/2006 of 23 October 2006 imposing a definitive anti-dumping duty on imports of ethanolamines originating in the United States of America (OJ L 294, 25.10.2006, p. 2).

STATEMENT FOR THE COUNCIL MINUTES

FRANCE, ITALY, LITHUANIA, SLOVAK REPUBLIC AND ROMANIA

France, Italy, Lithuania, the Slovak Republic and Romania maintain that the Commission proposal lacks an adequate legal basis. France, Italy, Lithuania, the Slovak Republic and Romania disagree with the interpretation provided, in this particular case, of both Article 9(1) of the EU Basic Regulation to justify the lack of necessity to define the Community industry and Article 21 on Community interest, especially concerning the possibility of using this notion to justify the modulation of the measures. The proposal does not include evidence supporting the argument that antidumping measures are against the Community interest in this case, rather the opposite. Hence, it provides no reason to justify that the measures be discontinued after one year.

Nevertheless, in light of the amount of evidence demonstrating that trade defence measures are still needed and fully justified, France, Italy, Lithuania, the Slovak Republic and Romania **abstain**.

Furthermore, France, Italy, Lithuania, the Slovak Republic and Romania consider that the Commission's proposal does not prevent the possibility for an expiry review of the measures in accordance with Article 11(2) of the Basic Regulation.

POLAND

Poland has several doubts concerning the necessity of continuation of the antidumping measures in view of the opposition of the majority of the European producers as well as doubts concerning the legal content of the Commission's proposal on which we elaborate below. However, as a matter of principle, Poland appreciates efforts aiming at finding the compromise reconciling interests of stakeholders and the Member States of the European Union. Therefore, Poland decided to **abstain** from voting on the Commission's proposal. Poland understands, however, that as the result of the achieved compromise the measures are prolonged for one year only.

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With respect to the legal construction of the Commission's proposal Poland finds several of its elements very doubtful.

*Firstly*, in Poland's opinion the application of analogy to Article 9(1) of Council Regulation (EC) No 384/96 (hereinafter "Basic Regulation") in order to avoid defining the notion of "Community industry" is not legally justified. Moreover, the wording of Article 3(5) of the Basic Regulation and the previous practice of the Commission make it clear that analysis of the injury suffered by the *Community industry* requires prior definition of it.

*Secondly*, in Poland's view the Commission set the duration of measures on the basis of the Community interest (recital 116 of the draft Regulation) which has no legal justification in the Basic Regulation.

*Thirdly*, the Community interest analysis contains elements of environment policy considerations (recital 108). Recognizing the importance of this policy as such, Poland finds no legal ground for such considerations in Article 21 of the Basic Regulation. According to this provision, the Community interest test is limited to strictly economic factors. This is confirmed by the previous practice of the Commission.

Poland notes that the *second* and the *third* element referred to above derive from the Green Paper "*Europe's Trade Defence Instruments in a changing global economy*". Those elements have been applied despite the fact that the process of TDI review initiated by that document has not been completed yet and several Member States, including Poland, expressed their concerns as to the ideas presented therein.

#### GERMANY

Germany supports the broad thrust of the above proposal for a Regulation. At the same time, Germany's view is that an extension of the existing anti-dumping duties by five years would have been justifiable. However, so as not to jeopardise the extension of the duties by one year Germany is supporting the proposal for a Council Regulation simply by **abstaining**.

In view of the reasons for the proposal and the steps leading up to it, Germany has a number of concerns and would draw particular attention to contradictions in the explanatory memorandum. In particular, Germany would make the following points:

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### 1. Original proposal by DG Trade

The original proposal by DG Trade to terminate the measures immediately made it clear that under Article 4(1) in conjunction with Article 5(4) of Regulation No 384/96 (the basic anti-dumping Regulation) the Commission enjoys wide discretion. DG Trade's proposal was clearly tied to the aim of establishing a different practice. In Germany view, such a practice, which is not in the interests of European Community industry and would be detrimental to other anti-dumping procedures in the future, had to be firmly opposed. This was the reason for Germany negative stance towards the proposal to terminate the measures. The idea was also to prevent an individual decision from establishing a new EU Commission practice which was legally problematic.

### 2. Representativeness of the application

If the EU Commission had applied the previous practice and criteria in its interpretation of Article 4(1) in conjunction with Article 5(4) of the basic anti-dumping Regulation, the question of representativeness, after excluding the undertakings with major import interests, would have been clear. In view of the dumping, injury, causality and Community interest established, the proposal could have been directly geared to maintaining the existing anti-dumping measures. The attempt to establish a different practice or the attempt to avoid a decision with regard to the necessary representativeness of the application and the related application by analogy of Article 9(1) of the basic anti-dumping Regulation have given rise to legal problems which, in our view, however, should not prove to be harmful to the complainant industry and its justified interests.

### 3. Community interest

Germany is also clearly opposed to any additional analyses in the examination of Community interest. General considerations, such as those relating to external, security, environment, regional or development policy, should remain excluded from the analysis of the Community interest. This also applies to Community policy on the increased use of energy-saving lamps, which the Commission referred to. The examination of Community interest must also be based on economic criteria in the future; by contrast, considerations of a general nature - including energy-saving - should not be taken into account.

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4. **Additional comments on the legally critical points of the proposal for a Council Regulation**

1. *"Like product"*

The Commission's comments on the "like products" issue (para. 16 ff.) are not very convincing. In particular, the Commission fails to attach any importance to the criterion of different end-uses (para. 19). This is problematic, especially as there is no legal justification for doing so. Germany would point out that under WTO rules the "end-use" criterion is used increasingly to determine the likeness of products.

2. *Analogy with Article 9(1) of the basic anti-dumping Regulation*

The Commission "avoids" the problem of defining Community industry by citing Article 9(1) of the basic anti-dumping Regulation *mutatis mutandis*. This provision stipulates: *"Where the complaint is withdrawn, the proceeding may be terminated unless such termination would not be in the Community interest"*.

This gives rise to the following problems:

- From a legal viewpoint, the application by analogy of Article 9(1) of the basic anti-dumping Regulation in investigation proceedings is in itself problematic. In addition to general legal-theory considerations as to whether such an application is possible and under what conditions, the WTO rules in particular argue against application of the provision by analogy. Under Article 11(3) of the WTO anti-dumping agreement, investigation proceedings may only be initiated *ex officio* or upon a request by the domestic industry. The options are alternatives. It follows from the provision's rationale that a combination - as in this case - is not possible.
- As far as can be gathered, whenever a complaint has been withdrawn hitherto, the relevant proceeding has been terminated. This constitutes a divergence from current administrative practice for which the Commission has not provided detailed justification.
- The Commission misquotes the rules. As the quoted text shows, what is involved is clearly an exception to the rule. The word "unless" explicitly indicates that if the complaint is not supported by the Community industry the proceeding should normally be terminated. Only in an exceptional case can it be continued *ex officio* if that is in the Community interest. In the Commission proposal, this becomes "the Community may take measures even if a complaint is withdrawn if that is in the

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Community interest" (para. 50). This adaptation of Article 9(1) of the basic anti-dumping Regulation is not in accordance with the original wording of the quoted exception-to-the-rule situation.

- If the quoted wording is to be taken in the sense of the exception-to-the-rule situation indicated, there must be overriding reasons of Community interest for any continuation of the proceeding despite the absence of support by the Community industry. According to the Commission's remarks on Community interest (para. 94 ff.), however, the overriding reasons are precisely for not maintaining the anti-dumping measures. In the Commission's view, extending them for a year could only be justified by way of exception. Hence, the Commission's remarks on Article 9(1) of the basic anti-dumping Regulation and on Community interest are contradictory.

### *3. Community interest*

The remarks on Community interest (para. 94 ff.) are contradictory and their tenor is not convincing. Moreover, they contradict Commission practice hitherto and the thinking behind Article 21 of the anti-dumping basic Regulation:

- firstly it is inconsistent for the Commission in para. 97 to stress that continuation of the anti-dumping measures would be in the clear interest of the complainant, but then in para 116 only - without further justification - to advocate an adjustment period to help the complainant;
- in para. 106, it is pertinently pointed out that general socio-political considerations should not play any role in assessing Community interest. And yet in the subsequent paragraphs these very considerations are slipped in "through the back door";
- it is not clear how the Commission arrives at the idea that an adjustment period (para. 116) to help the complainant is necessary. There is no explanation of the economic considerations on which such an adjustment period is based;
- it should, moreover, be pointed out that consideration of an adjustment period is an immaterial and illegal element in anti-dumping law. Transitional periods for structural adjustments belong within the law on general protection measures; that is where they have their *raison d'être*. Anti-dumping law, on the other hand, is concerned only with re-establishing a situation of fair competition. Anti-dumping measures are not as such intended to facilitate structural adjustment of the domestic industry. Consequently, the

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Commission's remarks in para. 115 blur in an inadmissible way the legally specified strict boundaries between measures against fair and unfair trade.

*4. Renewed application for an expiry review*

For legal reasons, a future renewed application for an expiry review cannot be ruled out at the present time. The Commission's remarks in para. 118 therefore raise legal doubts and are very much open to misinterpretation. What must also be decisive in future is whether or not the criteria of dumping, damage, causality and Community interest still obtain. As long as those criteria are fulfilled, there is nothing to prevent renewed extensions of the measures.



### **APPENDIX III: REQUEST (AND SAMPLE OF ITS REPLY) FOR ACCESS TO REASONS FOR PARTICULAR VOTING PATTERNS OF SWEDEN**

19 September 2015

**Permanent Representation of Sweden**

Square de Meeûs 30/De Meeûssquare 30

1000 Bruxelles/Brussel

Belgique

Dear Sir/Madam,

**Re: Request for access to documents relating to the reasons for Sweden's specific voting patterns (Yes/No) for adoption/termination of Anti-Dumping measures on Pakistan through the following Council Regulations**

I am a Doctoral research student working on "An enquiry into EU Anti-Dumping law with particular reference to Pakistan: How effectively do the EU Institutions implement and interpret their AD Regime?"

Could you please supply me with any background information pertaining to the particular voting patterns of Sweden through the voting processes leading to the adoption of the following Council Regulations? I am specifically interested to know the reasons and factors responsible for specific voting decisions of Sweden, either Yes or No, as stated in parentheses following the title of each measure.

- Closure of the written procedure for the adoption of a Council Regulation imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of polyethylene terephthalate originating in Australia, the People's Republic of China and terminating the anti-dumping proceeding concerning imports of polyethylene terephthalate originating in Pakistan and releasing the amounts secured by way of the provisional duties imposed. (Sweden voted Yes)
- Proposal for a Council Regulation (EC) 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan (No)
- Proposal for a Council Regulation (EC) 160/2002 amending Council Regulation (EC) No 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen

originating in Egypt, India and Pakistan, and terminating the proceeding with regard to imports originating in Pakistan (Yes)

- Proposal for a Council Regulation (EC) 397/2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan (No)
- Proposal for a Council Regulation (EC) 695/2006 amending Regulation (EC) No 397/2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan (Yes)
- Proposal for a Council Regulation (EC) 866/2005 (Document 9017/05) extending the definitive anti-dumping measures imposed by Council Regulation (EC) No 1470/2001 on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines (Yes)
- Proposal for a Council Regulation (EC) 1205/2007 imposing anti-dumping duties on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 and extending to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines (Rejected)

Your kind response, and any pertinent documents, may be sent as an attachment/scanned to my email address [Muhammad.Bilal@beds.ac.uk](mailto:Muhammad.Bilal@beds.ac.uk) or if you prefer to send them through the post, please send them to 126 Strathmore Avenue, LU1 3QN, Luton, UK.

Any information received will be used purely for my doctoral research. All information collected as part of this research study will be retained for two years following submission of my doctoral thesis, and then destroyed. It will be stored on a USB memory stick/ flash drive, kept under lock and key in the Law Office, University of Bedfordshire (UK).

If you so request, I am happy to mask the identity of your country when utilizing the data which you have supplied. In this case, I would simply refer to "one of the Member States voting yes" or "one of the Member States voting no", and so on.

Please do not hesitate to contact me if you need any further specificity with regard to the research.

Thanking you in advance for your kind assistance.

Yours faithfully,

Muhammad Bilal  
PhD Research Student  
University of Bedfordshire  
Luton, United Kingdom



**Kommerskollegium**  
National Board of Trade  
Enheten för EU:s handels-  
politik

YTTRANDE  
2007-07-17

Dnr 141-606-2007

<u>För kännedom (e-post):</u>	Utrikesdepartementet
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Hans Daag, Sv. Repr., Bryssel	
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## **EU:s antidumpningskommitté: Import av kompaktlysrör från Kina.**

Kollegiet föreslår att Sverige till fullo stödjer kommissionens förslag att omedelbart avsluta pågående "sunset"-översyn rörande importen av kompaktlysrör från Kina och att upphäva gällande åtgärder. Samtidigt stödjer kollegiet också förslaget att pågående interimundersökning mot ett kinesiskt företag i samma ärende som en följd härav också avslutas. Pågående åtgärder mot importen av kompaktlysrör från Vietnam, Pakistan och Filippinerna föreslås också att upphävas.

### **1. Bakgrund**

Slutgiltiga antidumpningsåtgärder infördes den 20 juli 2001 mot importen av kompaktlysrör ("energiparlampor") med ursprung i Kina (se basdatablad I.E.25). Åtgärden utgörs av tullar på mellan 0 % och 66,1 % beroende på tillverkande kinesiskt företag.

Åtgärden har senare utvidgats till att också omfatta aktuella varor som avsänts från Vietnam, Pakistan och Filippinerna, detta efter genomförda kringgåendeundersökningar.

### **2. Tidigare svensk ståndpunkt**

Sverige (tillsammans med Danmark, Nederländerna och Irland) motsatte sig de slutgiltiga åtgärderna 2001 men inte utvidgningen efter kringgåendeundersökningen mot Vietnam, Pakistan och Filippinerna 2005. Sverige hänvisade i det förra fallet till bristande bevisning om väsentlig skada och till att tullarna kunde leda till att konsumenterna tvingas köpa andra lampor än energiparlampor vilket är emot gemenskapens intresse.

BOX 6803, 113 86 STOCKHOLM  
BESÖKSADRESS: DROTTNINGGATAN 89  
TELEFON 08-690 48 00, FAX 08-30 67 59  
POSTGIRO 95 39 81-8  
INTERNET: <http://www.kommers.se>

### 3. Nu aktuell åtgärd

#### Allmänt

Den 19 juli 2006 inleddes en översyn om att avsluta pågående antidumpningsåtgärder mot kompaktlysrör härrörande från Kina. Strax därefter inleddes också en interimsoversyn mot ytterligare en annan kinesisk exportör, vilken tidigare åsatts en antidumpningstull om 0 %.

En noggrann utredning vidtogs i syfte att undersöka risken för fortsatt dumpning och skada med stöd av förhållandena under undersökningsperioden den 1 juli 2005 till den 30 juni 2006; samma period som också låg till grund för nämnda interimsoversyn.

Vid inledningsskedet befanns begäran om översynerna vinna stöd från en klar majoritet av EU-producenterna. Under utredningens gång fann dock kommissionen att flera producenter kom att motsätta sig fortsatta åtgärder. En särskild utredning gjordes därför med syfte att utröna om återstående producenter, som uttalat stöd för åtgärderna, å ena sidan representerade en huvuddel (åtminstone 25%) av gemenskapsproduktionen och att å den andra sidan dessa samtidigt översteg (mer än hälften) av de producenter som uttalat sig mot fortsatta åtgärder.

Kommissionen fann att den samlade produktionen för de företag som motsatt sig fortsatta åtgärder var större än den gemenskapsproduktion som uttalat sig för översynerna. Kraven för att fullfölja en "sunset"-översyn enligt EU-förordningens artikel 11(2) och interimsoversynen enligt artikel 11(3) var därmed inte uppfyllda.

Kommissionen föreslår därför att samtliga åtgärder upphävs avseende importen av kompaktlysrör från Kina och som en konsekvens härav också från Vietnam, Pakistan och Filippinerna. Därmed föreslås också att pågående översyner, inkl. interimsoversynen, avslutas.

### 4. Kollegiets synpunkter och förslag

Kollegiet föreslår att Sverige ställer sig helt bakom kommissionens samtliga förslag.

\*\*\*\*

Ärendet har avgjorts av kommerserådet Johan Krafft i närvaro av utredaren Gunvor Åkerblom, föredragande, och utredaren Åsa Andersson.

Johan Krafft

Gunvor Åkerblom



**Kommerskollegium**  
National Board of Trade  
Enheten för tullunionen

YTTRANDE  
2002-03-19

Dnr 141-549-2002

För kännedom:

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Utrikesdepartementet  
IH  
103 39 Stockholm

## Möte med EU:s antidumpningskommitté den 21 mars 2002: delyttrande

Nästa möte med EU:s antidumpningskommitté hålls i Bryssel den 21 mars 2002. I yttrandet behandlas följande dagordningspunkt:

### Dagordningspunkt 3 – sänglinne från Indien

Kollegiet föreslår att Sverige motsätter sig förslaget om en rådsförordning som bekräftar införandet av slutliga åtgärder mot importen från Indien under åberopandet av förekomsten av kvantitativa begränsningar, negativa prisseffekter för konsumenterna samt det negativa i att stoppa en konjunkturuomvandling med skyddsåtgärder.

#### 1. Bakgrund

1997 infördes slutgiltig antidumpningstull på inporten av sänglinne från Indien, Pakistan och Egypten (se basdatablad I.B.14).

Efter det att åtgärderna mot Indien fällts i en WTO-panel beslöt rådet i augusti 2001 att, vad gäller Indien, införa nya justerade (sänkta) antidumpningstullar samt att suspendera dessa tullar under sex månader för att ge berörda parter en möjlighet att under mellantiden begära att en översynsundersökning inleds.

Genom rådsbeslut upphörde åtgärderna mot Pakistan den 31 januari 2002 samtidigt som åtgärderna mot Egypten suspenderades. De senare åtgärderna upphörde den 28 februari 2002 eftersom ingen begäran om inledandet av en översynsundersökning lämnats in till kommissionen.

Efter en framställning från EUROCOTON inleddes i februari i år en översynsundersökning av åtgärderna mot Indien såvitt dessa avser frågan om dumpning. Denna undersökning pågår fortfarande.

BOX 6803, 113 86 STOCKHOLM  
BESÖKSADRESS: DROTTNINGGATAN 89  
TELEFON 08-690 48 00, FAX 08-30 67 59  
POSTGIRO 95 39 81-8  
INTERNET: <http://www.kommers.se>

## **2. Tidigare svensk ståndpunkt**

Sverige motsatte sig införandet 1997 av de slutgiltiga åtgärderna.

Motiveringen var att det inte kunde anses ligga i gemenskapsintresset att med antidumpningsåtgärder förhindra/stoppa den strukturomvandling som pågick. Mot åtgärderna talade vidare enligt svensk uppfattning de negativa effekterna för konsumenterna med höjda priser samt att det här var fråga om dubbla skyddsåtgärder eftersom importen av sänglinne från Indien och Pakistan redan var kvantitativt begränsad.

Sverige har ställt sig bakom att åtgärderna mot Egypten och Pakistan suspenderats/avslutats men motsatte sig inledandet av översynsundersökningen av åtgärderna mot Indien, vilka åtgärder Sverige istället föreslog skulle tillåtas upphöra.

## **3. Nu aktuell åtgärd**

Kommissionen har nu till medlemsstaterna lämnat ett förslag till en rådsförordning enligt vilken de slutgiltiga antidumpningsåtgärderna (senast justerade i augusti 2001) mot importen av sänglinne från Indien bekräftas.

Kommissionen har omvärderat uppgifterna i den ursprungliga undersökningen och särat ut uppgifterna om importen från Indien och därvid kommit fram till att denna import, sedd isolerad, har åsamkat gemenskapsindustrin väsentlig skada.

## **4. Svensk ståndpunkt**

### **a) Svensk produktion och import**

Sverige saknar enligt tillgänglig produktionsstatistik egen tillverkning av sänglinne.

Importen till Sverige är betydande och uppgick år 2002 till som högst drygt 510 miljoner kronor varav ca 210 miljoner kronors värde avsåg införsel från övriga EU-länder.

Importen direkt från Indien uppgick till 94 miljoner kronor.

### **b) Kollegiets synpunkter och förslag**

I sitt yttrande 1997 över kommissionens förslag om att införa slutgiltiga åtgärder mot importen från Indien, Egypten och Pakistan förklarade kollegiet sig inte (i och för sig) ha några invändningar mot kommissionens slutsatser om dumpning, skada och kausalitet.

Kollegiet föreslog dock att Sverige skulle motsätta sig åtgärderna av i huvudsak tre skäl vilket också blev det svenska ställningstagandet.

För det första var åtgärderna mot Indien och Pakistan föremål för kvantitativa begränsningar vilket bl. medför att beräkningen av dumpnings- och skademarginaler blir osäkra eftersom prisbilden påverkas av restriktionerna. Tungt vägande skäl var också den principiella svenska invändningen mot som här dubbla skyddsåtgärder.

För det andra hänvisades till den strukturomvandling som pågick inom området så att tillverkningen av enklare sänglinne förlades till tredje land medan produktutveckling, design och marknadsföring låg kvar i gemenskapen. Enligt kollegiets mening borde det ligga i gemenskapens intresse att inte hindra en sådan naturlig process genom införandet av skyddsåtgärder.

För det tredje var det kollegiets uppfattning att det var sannolikhet att kostnaderna för antidumpningsåtgärderna skulle komma att föras över till konsumentledet och att effekterna av detta inte endast skulle bli minimala som kommissionen hävdade.

Kollegiets slutsatser står kvar.

Importen från Indien är fortfarande föremål för begränsningsåtgärder med ett kvotutrymme för i år på totalt knappt 24 000 ton. Förra året låg kvotutnyttjandet vid ca 70 %. Att inte hela kvoten utnyttjades skulle kunna förklaras med att uttaget av antidumpningstull gör importen av de aktuella varorna mindre attraktiv.

Även om kollegiet på grund av den korta tid som stått till buds inte hunnit klarlägga hur långt strukturomvandlingen gått i dagsläget kvarstår den principiella invändningen att hindra en naturlig utveckling genom införandet av antidumpningsåtgärder.

Kollegiet har inte heller hunnit följa upp frågan om prisutvecklingen men anser det mycket sannolikt att en negativ prisutveckling drabbat och kommer att drabba konsumentledet med höjda priser.

Mot den bakgrunden föreslår kollegiet att Sverige motsätter sig förslaget om en rådsförordning som bekräftar införandet av slutliga åtgärder mot importen från Indien.

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Ärendet har avgjorts av kommerserådet Elisabeth Dahlin i närvaro av avdelningsdirektörerna Bo Esselius (föredragande).

Enligt Kommerskollegiums beslut

Bo Esselius





**Kommerskollegium**  
National Board of Trade  
Enheten för tullunionen

YTTRANDE  
2002-11-28

Dnr 141-2741-02

För kännedom:

Anders Ahnlid, UD-IH  
Claes Hammar, UD-IH  
Håkan Söderlundh, UD-IH (e-post)  
Björn Nellhede, UD-IH (e-post)  
Jessica Larsson, Sv. repr., Bryssel  
(e-post)

Utrikesdepartementet  
IH  
103 39 Stockholm

## EU:s antidumpnings- och antisubventionskommitté: skriftlig konsultation om sänglinne

### Sänglinne från Pakistan

Kollegiet föreslår att Sverige motsätter sig inledandet av en undersökning under ifrågasättande av allvarlig skada för gemenskapsindustrin och orsakssamband vad gäller importen från Pakistan.

#### 1. Bakgrund

Slutliga antidumpningsåtgärder infördes i november 1997 på importen av sänglinne från Indien, Pakistan och Egypten (se basdatablad I.B.14). Åtgärderna mot Pakistan och Egypten upphörde i början av året. Uttaget av antidumpningstullen mot importen från Indien är suspenderad sedan augusti 2001. Åtgärderna mot Indien är sedan februari i år är föremål för en interimsoversyn och på AD-kommitténs möte 19 november beslutades att översyn vid åtgärdstidens slut skall göras parallellt med en AS-undersökning.

Nu har Eurocoton kommit in med en framställning om inledande av ny AD-undersökning mot importen av sänglinne från Pakistan.

#### 2. Tidigare svensk ståndpunkt

Sverige motsatte sig införandet 1997 av de slutliga antidumpningsåtgärderna. Sverige har även motsatt sig inledandet av interimsoversyn, sun-set-översyn och antisubventionsundersökning mot importen från Indien. Motiveringen var att åtgärderna driver upp priserna för konsumenterna, vilket inte ligger i gemenskapens intresse. Från svensk sida pekades också på förekomsten av dubbla skyddsåtgärder.

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INTERNET: <http://www.kommers.se>

I de senaste konsultationerna avseende Indien pekade Sverige på att skada inte var allvarlig och att vi inte kunde se att orsakssamband mellan gemenskapsindustrins situation och importen från Indien.

### 3. Nu aktuell åtgärd

#### Allmänt

Den europeiska branschorganisationen Eurocoton har hos kommissionen lämnat in en framställning om att en antidumpningsundersökning ska inledas mot importen av sänglinne av bomull tillverkat i Pakistan. Varuomfattningen är densamma som i tidigare ärenden, dvs omfattande lakan, påslakan och örngott, förpackade för försäljning i form av set eller som separata enheter.

Framställningen har gjorts på uppdrag av gemenskapstillverkare i Belgien, Frankrike, Tyskland, Italien, Portugal och Spanien, vilka uppges svara för 57 % av den samlade produktionen i gemenskapen.

Varorna har en MFN tullsats på 12 %. Pakistan omfattas av GSP / EBA och har en preferenstull på 0 % om varan har ursprungsstatus.

#### Dumpning

Eurocoton har låtit en expert beräkna ett normalvärde å 5,017 \$ per kilo. Exportpriset har räknats fram med hjälp av offerter fob 3,45 \$. Beräkningarna resulterar i en dumpningsmarginal 45,51 %. KOM har justerat beräkningarna och redovisar dumpningsmarginal 23 %.

#### Skada

I **bilagan** lämnas en sammanställning över utvecklingen av olika skadefaktorer såsom de redovisas i framställningen inklusive information ur anmälan om dumpad import från Indien.

Importen från Pakistan är stor och har mellan 1997 och 2001 ökat med 47,8 %. Den enda import som ligger lägre i pris är den från Indien.

Gemenskapsindustrin har tappat marknadsandelar. Enligt kommissionens sammanfattning har andelen minskat från 17 % 1998 till ca 15 % första kvartalet 2002. Genom prispressen från importen har industrin inte kunnat återhämta sig utan rörelseresultatet har gått från en vinst på 5 % 1999 till en vinst på drygt 2 % första kvartalet 2002. Kommissionen påminner om att artikel 5.3 om fastställande av skada särskilt nämner det fall där gemenskapsindustrin inte hunnit återhämta sig från verkan av tidigare dumpning. Kommissionen anser detta gälla i aktuellt fall.

Prisunderskridandet har kommissionen beräknat till 20 %.

#### Kausalitet

Konsumtionen av sänglinne har ökat i gemenskapen de senaste åren. Tillverkningskostnader har sjunkit sedan 1998 och anses inte utgöra orsak till skada.

#### **4. Svensk ståndpunkt**

##### **a) Svensk produktion och import**

Importen av berörda varor är inte särredovisade i importstatistiken. Den sammanlagda införseln till Sverige under berörda KN-nummer uppgick 2001 till sammanlagt ca 5 800 ton. Direktimporten från Pakistan uppgick till 1 620 ton (ca 25 %). Tillförseln från övriga EU-länder kommer främst från Portugal.

##### **b) Kollegiets synpunkter och förslag**

Det kan konstateras att import av sänglinne från länder utanför EU ökat kraftigt under de senaste fem åren.

Gemenskapsindustrin har under denna tid ökat sin produktionskapacitet, produktion och försäljning, men genom den ökade konsumtionen har marknadsandelen minskat. Investeringarna har hållits uppe och antalet anställda har tom 2001 varit konstant. Lönsamheten har minskat från en vinst på 5 % (som kommissionen uppger vara normal) till drygt 2 %.

Industrin kan uppleva sin situation som besvärlig men om det kan karaktäriseras som allvarlig skada kan enligt kollegiets mening diskuteras.

Vid överväganden om att inleda en undersökning görs inte en bedömning om det berättigade i detta vad gäller gemenskapsintresset men kollegiet vill ändå påminna om de ställningstaganden som Sverige tidigare gjort beträffande sänglinne och konsumentaspekterna.

Mot bakgrund av vad ovan sagt föreslår kollegiet att Sverige motsätter sig inledandet av en undersökning under ifrågasättande av allvarlig skada för gemenskapsindustrin och att det extra skydd man åtnjutit tidigare har gett utrymme för anpassningar i tillräcklig utsträckning.

\*\*\*\*

Ärendet har avgjorts av kommerserådet Elisabeth Dahlin i närvaro av avdelningsdirektörerna Helena Detlof (föredragande) och Bo Esselius.

Enligt Kommerskollegiums beslut

Helena Detlof



**Kommerskollegium**  
National Board of Trade  
Enheten för tullunionen

YTTRANDE  
2005-04-05

Dnr 141-676-2005

För kännedom (e-post):  
Claes Ljungdahl, UD-IH  
Claes Hammar, UD-IH  
Björn Nellhede, UD-IH  
Lars Schmidt, Sv. repr., Bryssel

Utrikesdepartementet  
IH  
103 39 Stockholm

## Möte med EU:s antidumpningskommitté den 7 april 2005: kompaktlysrör från Kina, Viet- nam, Pakistan och Filippinerna

Kollegiet föreslår att Sverige inte motsätter sig att åtgärderna utvid-  
gas till att omfatta Vietnam, Pakistan och Filippinerna.

### 1. Bakgrund

Kompaktlysrör från Kina har varit föremål för antidumpningsåtgärder sedan februari 2001 (se basdatablad I.E.25). På begäran av branschorga-  
nisationen Lighting Industry and Trade (LITE) inleddes en antikringgå-  
endeundersökning beträffande kringgående via Vietnam, Pakistan och  
Filippinerna. Kommissionens undersökning är nu färdigställd.

### 2. Tidigare svensk ståndpunkt

Sverige motsatte sig införandet av slutgiltiga antidumpningsåtgärder. I  
kollegiets analys ifrågasattes kommissionens beslut om varuomfattning-  
en, väsentlig skada och kausalitet. Sverige ansåg vidare att det ur konsu-  
mentsynpunkt inte kunde anses ligga i gemenskapens intresse att införa  
några åtgärder.

Sverige stödde inledandet av en antikringgåendeundersökning.

### 3. Kringgående

Undersökningen avser bara import till EU15. Utredningen utmärks av en  
låg samarbetsgrad från de exporterande företagen

Importen av kompaktlysrör är inte särredovisat i importstatistiken utan  
redovisas under ett nummer som innefattar alla former av lysrör. Enligt  
annan statistik (inhämtad genom registrering av import) utgörs ungefär  
hälften av all import av lysrör från Kina utav import av kompaktlysrör.

Sedan åtgärderna infördes har importen av lysrör till gemenskapen  
(EU15) utvecklats enligt följande:

Miljoner enheter	1999	2000	2001	2002	2003	2004
Kina	70	85	47	37	55	70

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2005-04-05

Vietnam	0	0	1	2	5	8
Filippinerna	1	0	1	3	3	4
Pakistan	0	0	0	1	1	1

Enligt kommissionen visar handelsstatistiken att handelsflödena har omfördelats på ett sådant sätt som bara kan förklaras av att man försöker undvika antidumpningstullen. Exporten från Kina har ökat främst från de företag som har en liten dumpningsmarginal enligt följande (index):

Dumpningsmarginal för företag	2002	2003	2004
0	100	101	154
8,4%	100	178	221
17,1-66,1%	100	119	128
Total	100	110	150

För Filippinerna visar kinesisk och filippinsk statistik att exporten från Kina till Filippinerna har ökat kraftigt. Importstatistiken från Filippinerna visar dock högre import från Kina än exportstatistiken från Kina. Skillnaden mellan dessa siffror menar kommissionen står för exporten till gemenskapen. Exportpriset från Filippinerna låg under gemenskapens skadeeliminering pris. Exporten var dumpad jämfört med normalvärdet som fastställdes i den ursprungliga undersökningen.

I Pakistan finns en exportör, [REDACTED], som uppger att man har tillverkning i Pakistan. [REDACTED] är närstående till det kinesiska företaget [REDACTED]. En undersökning på plats visade att [REDACTED] hade hopsättningsverksamhet i Pakistan. Företaget kunde inte bevisa att denna verksamhet kunde klassas som mer än just hopsättningsverksamhet. Företaget medgav att man lagt verksamheten i Pakistan för att undvika antidumpningstullarna. Exporten var dumpad jämfört med normalvärdet som fastställdes i den ursprungliga undersökningen. [REDACTED] exporterade mer under UP:n än [REDACTED] (i Kina) gjort under den ursprungliga UP:n. Kommissionen drar därför slutsatsen att exporten från Pakistan undergräver åtgärderna.

I Vietnam finns fyra företag som samarbetat med kommissionen. Ett av företagen tillät inte något verifikationsbesök och deras uppgifter kunde därför inte anses tillförlitliga. Ett andra företag hade inte exporterat under UP:n och kunde därför inte undersökas. Ett tredje företag lämnade felaktig information och kunde därför inte anses samarbeta. Det sista företaget, som ägs av ett amerikanskt företag, hade inte tillräckligt god bokföring för att man skulle kunna avgöra om verksamheten i Vietnam kunde klassas som hopsättning eller tillverkning. Detta företag köpte de flesta komponentdelarna från Kina. Sammantaget fann kommissionen inte att något företag kunde anses ha genuin tillverkning i Vietnam. Exporten från Vietnam var dumpad i förhållande till normalvärdet i den ursprungliga undersökningen.

2005-04-05

Det pakistanska företaget, samt de fyra vietnamesiska företagen, ansökte även om undantag från utvidgningen av antidumpningsåtgärder, men kommissionen föreslår att några sådana undantag inte beviljas. Kommissionen föreslår att den antidumpningstull som gäller för "alla övriga" företag i Kina, 66,1%, utvidgas till att omfatta även Filippinerna, Pakistan och Vietnam.

#### 4. Kollegiets synpunkter och förslag

Enligt artikel 13 i grundförordningen får antidumpningsåtgärder utvidgas om de kringgås. Kringgående definieras som en förändring i handelsmönstret mellan tredjeland och gemenskapen som härrör från sådant bruk, sådana processer eller sådan bearbetning för vilka ingen annan tillräcklig grund eller ekonomisk motivering finns än införandet av antidumpningstullen. En hopsättningsverksamhet anses utgöra kringgående om verksamheten påbörjades eller väsentligt utvidgades efter det att antidumpningsundersökningen inleddes och de berörda delarna kommer från det land som omfattas av åtgärderna och om delarna utgör 60 % eller mer av det sammanlagda värdet av delarna i den sammansatta produkten. För att ett kringgående ska leda till utvidgning av åtgärderna krävs att exporten är dumpad i förhållande till det ursprungliga normalvärdet och att antidumpningsåtgärdens positiva verkningar undergrävs av kringgåendet.

Importen från de tre undersökta länderna har ökat kraftigt sedan åtgärderna infördes. Importen från de tre länderna är dock fortfarande liten jämfört med importen från Kina, som ökat främst på grund av att företag med låg dumpningsmarginal har ökat sin export. Det bristande samarbetet som kommissionen stött på tyder dock enligt kollegiet på att exporten från dessa länder till stor del beror på att man vill kringgå åtgärderna. Exporten har visat sig vara dumpad, och kan anses, trots att den är liten, undergräva verkningarna av åtgärderna. Kollegiet föreslår därför att Sverige inte motsätter sig till att åtgärderna utvidgas till att omfatta Filippinerna, Pakistan och Vietnam.

\*\*\*\*

Ärendet har avgjorts av tf enhetschefen Ulf Eriksson, i närvaro av ämnesrådet Bo Esselius och utredaren Hilda Fridh, den senare föredragande.

Enligt Kommerskollegiums beslut

Hilda Fridh

## **APPENDIX IV: REQUEST (AND ITS REPLY) FOR ACCESS TO REASONS FOR PARTICULAR VOTING PATTERNS OF DENMARK**

02 September 2015

### **Permanent Representation of Denmark**

Rue d'Arlon 73/Aarlenstraat 73

1040 Bruxelles/Brussel

Dear Sir/Madam,

**Re: Request for access to documents relating to the reasons for Denmark's specific voting patterns (Yes/No) for adoption/termination of Anti-Dumping measures on Pakistan through the following Council Regulations**

I am a Doctoral research student working on "An enquiry into EU Anti-Dumping law with particular reference to Pakistan: How effectively do the EU Institutions implement and interpret their AD Regime?"

Could you please supply me with any background information pertaining to the particular voting patterns of Denmark through the voting processes leading to the adoption of the following Council Regulations? I am specifically interested to know the reasons and factors responsible for specific voting decisions of Denmark, either Yes or No, as stated in parentheses following the title of each measure.

- Closure of the written procedure for the adoption of a Council Regulation imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of polyethylene terephthalate originating in Australia, the People's Republic of China and terminating the anti-dumping proceeding concerning imports of polyethylene terephthalate originating in Pakistan and releasing the amounts secured by way of the provisional duties imposed. (Denmark voted Yes)
- Proposal for a Council Regulation (EC) 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan (Yes)
- Proposal for a Council Regulation (EC) 160/2002 amending Council Regulation (EC) No 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan, and terminating the proceeding with regard to imports originating in Pakistan (Denmark voted Yes)
- Proposal for a Council Regulation (EC) 397/2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan (No)

- Proposal for a Council Regulation (EC) 695/2006 amending Regulation (EC) No 397/2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan (Yes)
- Proposal for a Council Regulation (EC) 866/2005 (Document 9017/05) extending the definitive anti-dumping measures imposed by Council Regulation (EC) No 1470/2001 on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines (Yes)
- Proposal for a Council Regulation (EC) 1205/2007 imposing anti-dumping duties on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 and extending to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines (Denmark Rejected Proposal)

Your kind response, and any pertinent documents, may be sent as an attachment/scanned to my email address [Muhammad.Bilal@beds.ac.uk](mailto:Muhammad.Bilal@beds.ac.uk) or if you prefer to send them through the post, please send them to 126 Strathmore Avenue, LU1 3QN, Luton, UK.

Any information received will be used purely for my doctoral research. All information collected as part of this research study will be retained for two years following submission of my doctoral thesis, and then destroyed. It will be stored on a USB memory stick/ flash drive, kept under lock and key in the Law Office, University of Bedfordshire (UK).

If you so request, I am happy to mask the identity of your country when utilizing the data which you have supplied. In this case, I would simply refer to “one of the Member States voting yes” or “one of the Member States voting no”, and so on.

Please do not hesitate to contact me if you need any further specificity with regard to the research.

Thanking you in advance for your kind assistance.

Yours faithfully,

Muhammad Bilal  
PhD Research Student  
University of Bedfordshire  
Luton, United Kingdom





Steen Christensen <SteChr@erst.dk>

To: ☐ Muhammad Bilal; Cc: ☐ Frederik F. Jensen <Ffelen@erst.dk>;



Reply all | v

Tue 23/09/2015 10:56

You replied on 30/09/2015 20:42.

Dear Mr. Muhammad Bilal.

Following your request received through the Danish Permanent Representation to the EU in Brussels on September 22, 2015, for access to documents relating to the reasons for Denmark's specific voting patterns (Yes/No) for adoption/termination of Anti-Dumping measures on Pakistan through certain Council Regulations you have through a telephone conversation with Mr. Frederik Jensen on September 28, 2015, specified your request to the questions mentioned below, and we have inserted our reply to your questions while noting that in some instances no documents or background information exist in our files.

#### **PET**

Regulation subject to questions: Closure of the written procedure for the adoption of a Council Regulation imposing a definitive antidumping duty and collecting definitively the provisional duty imposed on imports of polyethylene terephthalate originating in Australia, the People's Republic of China and terminating the anti-dumping proceeding concerning imports of polyethylene terephthalate originating in Pakistan and releasing the amounts secured by way of the provisional duties imposed. (Denmark voted Yes)

Reply: There exist records of a termination of a written procedure concerning the above mentioned proposal/regulation (Council regulation No. 1467/2004 I assume).

*Indications have however been found on a revised proposal. We assume this may have been the reason for the closure of the written procedure. It appears that the revised proposal contained lower duties on imports from Australia and China than otherwise envisaged. Also, it would seem that the Commission had found at a late stage that there was no basis for imposition of measures against Pakistan. We assume but cannot substantiate that Denmark supported these changes at the time.*

#### **Bed linen**

Regulation subject to questions: Proposal for a Council Regulation (EC) 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan (Yes)

Reply: We have not been able to locate any records of this regulation which is 18 years old. Therefore we cannot explain why Denmark supported the proposal (according to your parenthesis). We do note however, that a number of years ago Denmark changed its general approach to anti-dumping whereby more emphasis was given to the economic impacts of antidumping measures. This led to a more skeptical approach compared to earlier years.

Regulation subject to questions: Proposal for a Council Regulation (EC) 160/2002 amending Council Regulation (EC) No 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan, and terminating the proceeding with regard to imports originating in Pakistan (Denmark voted Yes)

Reply: The amendments concerning imports from Egypt and termination of measures on imports from Pakistan followed from an appellate body report and a panel report which had resulted in suspension of measures of imports of bed linen from India. The council had considered it appropriate to recalculate the dumping margins for Egypt and Pakistan without use of the "zeroing" methodology. This resulted in no dumping being found on imports from Pakistan. Furthermore measures on imports from Egypt were suspended. Evidently measures cannot be in place when no dumping is found. Denmark therefore supported the amendments including termination of measures against imports of bed linen from Pakistan.

Regulation subject to questions: Proposal for a Council Regulation (EC) 397/2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan (No)

Reply: According to the Commission's own investigation producers from Pakistan exported the product concerned to the EU with an average profit of 3,5 % and their increase in market share was relatively modest. Furthermore, EU industry had a healthy profit and was able to increase its sales (although their market share declined somewhat). Turnover, sales and prices showed a positive trend. Also, European producers could not satisfy demand in the EU for bed linen. Injury is therefore limited and may be caused by other factors in addition to which it may not be in the union's industry. Therefore significant doubts as to the appropriateness of measures imposed to protect an industry which appeared relatively healthy at the time.

Regulation subject to questions: Proposal for a Council Regulation (EC) 695/2006 amending Regulation (EC) No 397/2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan (Yes)

Reply: Denmark had not supported the imposition of anti-dumping measures against bed linen from Pakistan in 2004 and therefore welcomed the interim review and proposal to lower the duties on the products. Although not in favor of the measures the lower duty of 0-8,5% represented a significant improvement.

#### CFL-i

Regulation subject to questions: Proposal for a Council Regulation (EC) 866/2005 (Document 9017/05) extending the definitive anti-dumping measures imposed by Council Regulation (EC) No 1470/2001 on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines (Yes)

Reply: In general Denmark supports the extension of anti-dumping measures to other third countries when it is established that deliberate circumvention of existing measures is taking place by transshipment or other methods. In this case we believe that the Commission had demonstrated this to be the case. One reason for our general support of anti-circumvention measures is that they do not target genuine exporting producers in the countries through which circumvention practices occurred when these can demonstrate their status and that they did participate in circumvention practices.

Regulation subject to questions: Proposal for a Council Regulation (EC) 1205/2007 imposing anti-dumping duties on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 and extending to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines (Denmark Rejected Proposal)

#### Reply:

Until a few months before the extension of the anti-dumping measures we had the impression that the Commission intended to propose their termination. We were therefore negatively surprised by the apparent change of opinion whereby measures were extended for a period of one year.

We did not believe that there were sufficient grounds to continue the measures as we believed this to be against the union interest. We were dealing with a situation where many producers had already out sourced production to third countries. The measures were therefore mainly put in place to offer protection to one European producer at the expense of European consumers who according to our analysis would have to pay considerably more for the product. Furthermore, it did not appear that other European producers supported the measures.

We hope our answers are satisfactory and we encourage you to contact us if this is not the case or if more information is needed.

Finally we shall inform you that you are entitled to complain about our response to your request. Such complaint shall be sent to this Agency (The Danish Business Authority). If we maintain our decision concerning our response to your request we must within 7 working days from reception of your complaint forward it to final decision by the Ministry of Business & Growth.

Yours sincerely

**Steen Christensen**

chief economist

**Danish Business Authority**

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ERHVERVS- OG VEKSTMINISTERIET

**P** **Par påmindelse - vedrørende denne e-mail blev det bedt om at**

## **APPENDIX V: REQUESTS (ALONG WITH THEIR REPLYS) SENT TO SOME OTHER MEMBER STATES WHICH WAS DECLINED DUE TO THE CONFIDENTIALITY OF DOCUMENTS**

02 September 2015

### **Permanent Representation of Austria**

Avenue de Cortenbergh 30/Kortenberglaan 30  
1040 Bruxelles/Brussel  
Belgique

Dear Sir/Madam,

### **Re: Request for access to documents relating to the reasons for Austria's specific voting patterns (Yes/No) for adoption/termination of Anti-Dumping measures on Pakistan through the following Council Regulations**

I am a Doctoral research student working on "An enquiry into EU Anti-Dumping law with particular reference to Pakistan: How effectively do the EU Institutions implement and interpret their AD Regime?"

Could you please supply me with any background information pertaining to the particular voting patterns of Austria through the voting processes leading to the adoption of the following Council Regulations? I am specifically interested to know the reasons and factors responsible for specific voting decisions of Austria, either Yes or No, as stated in parentheses following the title of each measure.

- Closure of the written procedure for the adoption of a Council Regulation imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of polyethylene terephthalate originating in Australia, the People's Republic of China and terminating the anti-dumping proceeding concerning imports of polyethylene terephthalate originating in Pakistan and releasing the amounts secured by way of the provisional duties imposed. (Austria Abstained)
- Proposal for a Council Regulation (EC) 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan (Yes)
- Proposal for a Council Regulation (EC) 160/2002 amending Council Regulation (EC) No 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan, and terminating the proceeding with regard to imports originating in Pakistan (Yes)
- Proposal for a Council Regulation (EC) 397/2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan (Yes)

- Proposal for a Council Regulation (EC) 695/2006 amending Regulation (EC) No 397/2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan (Yes)
- Proposal for a Council Regulation (EC) 866/2005 (Document 9017/05) extending the definitive anti-dumping measures imposed by Council Regulation (EC) No 1470/2001 on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines (Yes)
- Proposal for a Council Regulation (EC) 1205/2007 imposing anti-dumping duties on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 and extending to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines (Abstained)

Your kind response, and any pertinent documents, may be sent as an attachment/scanned to my email address [Muhammad.Bilal@beds.ac.uk](mailto:Muhammad.Bilal@beds.ac.uk) or if you prefer to send them through the post, please send them to 126 Strathmore Avenue, LU1 3QN, Luton, UK.

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Please do not hesitate to contact me if you need any further specificity with regard to the research.

Thanking you in advance for your kind assistance.

Yours faithfully,

Muhammad Bilal  
PhD Research Student  
University of Bedfordshire  
Luton, United Kingdom



Zehetner, Ingrid <Ingrid.Zehetner@bmwfw.gv.at>



Reply all | v

To: ☐ Muhammad Bilal; Cc: ☐ Farcas-Hutchinson, Carla <Carla.Farcas-Hutchinson@bmwfw.gv.at>; ☐ Mayr, Thomas <Thomas.Mayr@bmeia.gv.at>; v

Thu 15/10/2015 15:14

Dear Mr Bilal,

Pursuant to Article 13 para 2 of the Standard Rules of Procedure for Committees (Official Journal of the European Union 2011/C 206/06), the discussions of the Trade Defense Instruments Committee shall be confidential. Para 4 of the same Article imposes the obligation on the members of the committee, as well as experts and representatives of third parties to respect the confidentiality requirements set out in the rules of procedure.

The reasoning behind this rule is inter alia that information regarding voting behaviour and reasons are especially sensitive as decisions of the committee should be perceived as decisions of the European Union as a whole, without exposing the individual position of each member state in a particular issue. This process and the protection it affords aims at strengthening the positions of the European Union as well as at the protection of each member state.

We are therefore astonished that you are informed about the Austrian votes in such detail and are not in the position to give you the requested information as regards the specific reasons for our decisions.

However, we may inform you on a general basis that we take our voting decisions - as presumably most of EU member states - in accordance with an appreciation of the interests of our industry (primarily manufacturing, but also user industry).

Best regards,

Mag. Ingrid ZEHETNER

Head of Division C2/9 - Foreign Trade Administration

Federal Ministry of Science, Research and Economy  
A-1010 Vienna, Stubenring 1

Tel.: +43 (0)1 711 00-5391

Fax: +43 (0)1 711 00-93 5391

<mailto:ingrid.zehetner@bmwfw.gv.at>

<http://www.bmwfw.gv.at/>

02 September 2015

**Permanent Representation of Bulgaria**

Square Marie-Louise 49/Maria-Louizasquare 49

1000 Bruxelles/Brussel

Belgique

Dear Sir/Madam,

**Re: Request for access to documents relating to the reasons for Bulgaria's specific voting patterns (Yes/No) for adoption/termination of Anti-Dumping measures on Pakistan through the following Council Regulations**

I am a Doctoral research student working on "An enquiry into EU Anti-Dumping law with particular reference to Pakistan: How effectively do the EU Institutions implement and interpret their AD Regime?"

Could you please supply me with any background information pertaining to the particular voting patterns of Bulgaria through the voting processes leading to the adoption of the following Council Regulations? I am specifically interested to know the reasons and factors responsible for specific voting decisions of Bulgaria, either Yes or No, as stated in parentheses following the title of each measure.

- Closure of the written procedure for the adoption of a Council Regulation imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of polyethylene terephthalate originating in Australia, the People's Republic of China and terminating the anti-dumping proceeding concerning imports of polyethylene terephthalate originating in Pakistan and releasing the amounts secured by way of the provisional duties imposed. (Bulgaria voted Yes)
- Proposal for a Council Regulation (EC) 1205/2007 imposing anti-dumping duties on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 and extending to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines (Bulgaria Abstained)

Your kind response, and any pertinent documents, may be sent as an attachment/scanned to my email address [Muhammad.Bilal@beds.ac.uk](mailto:Muhammad.Bilal@beds.ac.uk) or if you prefer to send them through the post, please send them to 126 Strathmore Avenue, LU1 3QN, Luton, UK.

Any information received will be used purely for my doctoral research. All information collected as part of this research study will be retained for two years following submission of my doctoral thesis, and then destroyed. It will be stored on a USB memory stick/ flash drive, kept under lock and key in the Law Office, University of Bedfordshire (UK).

If you so request, I am happy to mask the identity of your country when utilizing the data which you have supplied. In this case, I would simply refer to "one of the Member States voting yes" or "one of the Member States voting no", and so on.



Please do not hesitate to contact me if you need any further specificity with regard to the research.




Thanking you in advance for your kind assistance.

Yours faithfully,

Muhammad Bilal  
PhD Research Student  
University of Bedfordshire  
Luton, United Kingdom

BN

Boyan Natan <Boyan.Natan@bg-permrep.eu>  
To:  Muhammad Bilal 

  Reply all | 

Tue 08/09/2015 12:28

The message sender has requested a read receipt. To send a receipt, [click here](#).

You replied on 11/09/2015 15:52.

Dear Mr. Bilal,

In response to your request, here below I am sending the official reply on the part of the competent Bulgarian authority – the Ministry of Economy, to which your request has been forwarded for consideration.

Thank you for your interest in the Bulgarian decision making process in the area of the implementation of the Trade Defence Instruments.

As you know, Trade Defence Instruments are a part of Common Commercial Policy of the EU. In this regard Bulgaria has a strong internal system of preparing and approving a Bulgarian opinion on each issue. In the process of formation of Bulgarian official position in any particular case our competent administration examines carefully all the facts and evidences of the Commission proposal and takes into account both the interests of Bulgarian business and the interests of the European industry and users.

Unfortunately, all the information regarding the concrete cases you are interested about is confidential and we are not allowed to distribute any of the documents at our disposal. Breaking the confidentiality of the information could affect seriously the interests of the Bulgarian industry and users.

Best regards,

**Boyan Natan**  
Counsellor, Trade Policy  
Permanent Representation of Bulgaria to the EU  
B-1000 Brussels  
49, Sq. Marie-Louise



02 September 2015

**Permanent Representation of Luxembourg**

Avenue de Cortenbergh 75/Kortenberglaan 75

1000 Bruxelles/Brussel

Belgique

Dear Sir/Madam,

**Re: Request for access to documents relating to the reasons for Luxembourg's specific voting patterns (Yes/No) for adoption/termination of Anti-Dumping measures on Pakistan through the following Council Regulations**

I am a Doctoral research student working on "An enquiry into EU Anti-Dumping law with particular reference to Pakistan: How effectively do the EU Institutions implement and interpret their AD Regime?"

Could you please supply me with any background information pertaining to the particular voting patterns of Luxembourg through the voting processes leading to the adoption of the following Council Regulations? I am specifically interested to know the reasons and factors responsible for specific voting decisions of Luxembourg, either Yes or No, as stated in parentheses following the title of each measure.

- Closure of the written procedure for the adoption of a Council Regulation imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of polyethylene terephthalate originating in Australia, the People's Republic of China and terminating the anti-dumping proceeding concerning imports of polyethylene terephthalate originating in Pakistan and releasing the amounts secured by way of the provisional duties imposed. (Luxembourg voted Yes)
- Proposal for a Council Regulation (EC) 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan (Yes)
- Proposal for a Council Regulation (EC) 160/2002 amending Council Regulation (EC) No 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan, and terminating the proceeding with regard to imports originating in Pakistan (Yes)
- Proposal for a Council Regulation (EC) 397/2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan (Yes)
- Proposal for a Council Regulation (EC) 695/2006 amending Regulation (EC) No 397/2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan (Yes)
- Proposal for a Council Regulation (EC) 866/2005 (Document 9017/05) extending the definitive anti-dumping measures imposed by Council Regulation (EC) No 1470/2001 on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines (Yes)

- Proposal for a Council Regulation (EC) 1205/2007 imposing anti-dumping duties on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 and extending to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines (Abstained)

Your kind response, and any pertinent documents, may be sent as an attachment/scanned to my email address [Muhammad.Bilal@beds.ac.uk](mailto:Muhammad.Bilal@beds.ac.uk) or if you prefer to send them through the post, please send them to 126 Strathmore Avenue, LU1 3QN, Luton, UK.

Any information received will be used purely for my doctoral research. All information collected as part of this research study will be retained for two years following submission of my doctoral thesis, and then destroyed. It will be stored on a USB memory stick/ flash drive, kept under lock and key in the Law Office, University of Bedfordshire (UK).

If you so request, I am happy to mask the identity of your country when utilizing the data which you have supplied. In this case, I would simply refer to “one of the Member States voting yes” or “one of the Member States voting no”, and so on.

Please do not hesitate to contact me if you need any further specificity with regard to the research.

Thanking you in advance for your kind assistance.

Yours faithfully,

Muhammad Bilal  
PhD Research Student  
University of Bedfordshire  
Luton, United Kingdom



David Weis <david.weis@mae.etat.lu>

To: ☐ Muhammad Bilal; Cc: ☐ Anne Majerus <Anne.Majerus@mae.etat.lu>;



Reply all | v

Wed 02/09/2015 17:34

You replied on 11/09/2015 15:53.

Dear Mr Bilal,

Many thanks for your message. I'm afraid this information is of confidential nature and we can thus not reply to your request.

Mat beschte Gréiss/Best regards,

**David Weis**

Secrétaire de Légation

LE GOUVERNEMENT DU GRAND-DUCHÉ DE LUXEMBOURG

**Ministère des Affaires étrangères et européennes**

Représentation permanente du Luxembourg auprès de l'Union européenne

75, avenue de Cortenbergh, B-1000 Bruxelles

Tél. (+32) 27375640, GSM (+32) 473541129

E-mail : david.weis@mae.etat.lu

www.mae.lu, www.gouvernement.lu, [www.luxembourg.lu](http://www.luxembourg.lu)

Retrouvez l'activité du gouvernement au sein du Conseil de l'UE sur [Twitter](https://twitter.com).



02 September 2015

**Permanent Representation of Malta**

Rue Archimède 25/Archimedesstraat 25

1000 Bruxelles/Brussel

Belgique

Dear Sir/Madam,

**Re: Request for access to documents relating to the reasons for Malta's specific voting patterns (Yes/No) for adoption/termination of Anti-Dumping measures on Pakistan through the following Council Regulations**

I am a Doctoral research student working on "An enquiry into EU Anti-Dumping law with particular reference to Pakistan: How effectively do the EU Institutions implement and interpret their AD Regime?"

Could you please supply me with any background information pertaining to the particular voting patterns of Malta through the voting processes leading to the adoption of the following Council Regulations? I am specifically interested to know the reasons and factors responsible for specific voting decisions of Malta, either Yes or No, as stated in parentheses following the title of each measure.

- Closure of the written procedure for the adoption of a Council Regulation imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of polyethylene terephthalate originating in Australia, the People's Republic of China and terminating the anti-dumping proceeding concerning imports of polyethylene terephthalate originating in Pakistan and releasing the amounts secured by way of the provisional duties imposed. (Malta voted Yes)
- Proposal for a Council Regulation (EC) 695/2006 amending Regulation (EC) No 397/2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan (Yes)
- Proposal for a Council Regulation (EC) 866/2005 (Document 9017/05) extending the definitive anti-dumping measures imposed by Council Regulation (EC) No 1470/2001 on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines (Yes)
- Proposal for a Council Regulation (EC) 1205/2007 imposing anti-dumping duties on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 and extending to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines (Rejected)

Your kind response, and any pertinent documents, may be sent as an attachment/scanned to my email address [Muhammad.Bilal@beds.ac.uk](mailto:Muhammad.Bilal@beds.ac.uk) or if you prefer to send them through the post, please send them to 126 Strathmore Avenue, LU1 3QN, Luton, UK.

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as part of this research study will be retained for two years following submission of my doctoral thesis, and then destroyed. It will be stored on a USB memory stick/ flash drive, kept under lock and key in the Law Office, University of Bedfordshire (UK).

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Please do not hesitate to contact me if you need any further specificity with regard to the research.

Thanking you in advance for your kind assistance.

Yours faithfully,

Muhammad Bilal  
PhD Research Student  
University of Bedfordshire  
Luton, United Kingdom



Cassar Anis at MaltaRep <anis.cassar@gov.mt>

To: Muhammad Bilal



Reply all |

Mon 07/09/2015 09:53

You replied on 11/09/2015 15:53.

Dear Mr. Bilal,

Reference is being made to the request for access to documents relating to the reasons for Malta's specific voting patterns (Yes/No) for adoption/termination of Anti-Dumping measures on Pakistan through 4 Council Regulations

As a general rule, Malta does not release internal negotiating and policy documents relating to EU legislative procedures. It is worth noting, however, that Malta tends to adopt a generally liberal approach when it comes to international trade issues. Nevertheless, Malta supports all efforts to ensure that international fair trade standards are maintained in order to promote a level playing field.

Sincerely,

Anis Cassar

Technical Attaché (Press and Information)

Permanent Representation of Malta to the EU

t: +32 497 647 311 voip: (+356 2204 / +32 2238) 2687 e: anis.cassar@gov.mt |

[[www.odpm.gov.mt](http://www.odpm.gov.mt)][www.odpm.gov.mt](http://www.odpm.gov.mt)

*Kindly consider your environmental responsibility before printing this e-mail*



PERMANENT  
REPRESENTATION OF  
MALTA TO THE EUROPEAN  
UNION

Rue Archimède, Brussels,  
Belgium

02 September 2015

**Permanent Representation of the Netherlands**

Avenue de Cortenbergh 4-10/Kortenberglaan 4-10

1040 Bruxelles/Brussel

Belgique

Dear Sir/Madam,

**Re: Request for access to documents relating to the reasons for Netherlands' specific voting patterns (Yes/No) for adoption/termination of Anti-Dumping measures on Pakistan through the following Council Regulations**

I am a Doctoral research student working on "An enquiry into EU Anti-Dumping law with particular reference to Pakistan: How effectively do the EU Institutions implement and interpret their AD Regime?"

Could you please supply me with any background information pertaining to the particular voting patterns of Netherlands through the voting processes leading to the adoption of the following Council Regulations? I am specifically interested to know the reasons and factors responsible for specific voting decisions of Netherlands, either Yes or No, as stated in parentheses following the title of each measure.

- Closure of the written procedure for the adoption of a Council Regulation imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of polyethylene terephthalate originating in Australia, the People's Republic of China and terminating the anti-dumping proceeding concerning imports of polyethylene terephthalate originating in Pakistan and releasing the amounts secured by way of the provisional duties imposed. (Netherlands voted Yes)
- Proposal for a Council Regulation (EC) 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan (No)
- Proposal for a Council Regulation (EC) 160/2002 amending Council Regulation (EC) No 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan, and terminating the proceeding with regard to imports originating in Pakistan (Yes)
- Proposal for a Council Regulation (EC) 397/2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan (No)
- Proposal for a Council Regulation (EC) 695/2006 amending Regulation (EC) No 397/2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan (Yes)
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- Proposal for a Council Regulation (EC) 1205/2007 imposing anti-dumping duties on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation

(EC) No 384/96 and extending to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines (Rejected)

Your kind response, and any pertinent documents, may be sent as an attachment/scanned to my email address [Muhammad.Bilal@beds.ac.uk](mailto:Muhammad.Bilal@beds.ac.uk) or if you prefer to send them through the post, please send them to 126 Strathmore Avenue, LU1 3QN, Luton, UK.

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Please do not hesitate to contact me if you need any further specificity with regard to the research.

Thanking you in advance for your kind assistance.

Yours faithfully,

Muhammad Bilal  
PhD Research Student  
University of Bedfordshire  
Luton, United Kingdom



## A gentle reminder regarding request for access to documents and statement of reasons for particular voting patterns in Anti-Dumping proceedings



Dijkstra, Tjalling <tjalling.dijkstra@minbuza.nl>

To: Muhammad Bilal; Cc: Jerome Larosch <Jerome.Larosch@minbuza.nl>;



Reply all |

Wed 30/09/2015 08:00

Dear Muhammad Bilal,  
The information you are asking for is confidential. We can therefore not supply this information.  
Good luck with your thesis.  
Regards,  
Tjalling Dijkstra

Dr Tjalling Dijkstra  
Senior trade policy advisor  
International Trade Policy and Economic Governance Department  
.....  
Directorate-General for Foreign Economic Relations  
Ministry of Foreign Affairs  
Beuzenhoutseweg 67 | 2494 AC | The Hague | The Netherlands  
P.O. box 20061 | 2500 EB | The Hague | The Netherlands  
.....  
T + 31 70 348 4319  
M + 31 6 11 37 65 36  
[tjalling.dijkstra@minbuza.nl](mailto:tjalling.dijkstra@minbuza.nl)

02 September 2015

**Permanent Representation of the United Kingdom**

Avenue d'Auderghem 10/Oudergemslaan 10

1040 Bruxelles/Brussel

Belgique

Dear Sir/Madam,

**Re: Request for access to documents relating to the reasons for United Kingdom's specific voting patterns (Yes/No) for adoption/termination of Anti-Dumping measures on Pakistan through the following Council Regulations**

I am a Doctoral research student working on "An enquiry into EU Anti-Dumping law with particular reference to Pakistan: How effectively do the EU Institutions implement and interpret their AD Regime?"

Could you please supply me with any background information pertaining to the particular voting patterns of United Kingdom through the voting processes leading to the adoption of the following Council Regulations? I am specifically interested to know the reasons and factors responsible for specific voting decisions of United Kingdom, either Yes or No, as stated in parentheses following the title of each measure.

- Closure of the written procedure for the adoption of a Council Regulation imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of polyethylene terephthalate originating in Australia, the People's Republic of China and terminating the anti-dumping proceeding concerning imports of polyethylene terephthalate originating in Pakistan and releasing the amounts secured by way of the provisional duties imposed. (UK voted Yes)
- Proposal for a Council Regulation (EC) 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan (Yes)
- Proposal for a Council Regulation (EC) 160/2002 amending Council Regulation (EC) No 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan, and terminating the proceeding with regard to imports originating in Pakistan (Yes)
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- Proposal for a Council Regulation (EC) 1205/2007 imposing anti-dumping duties on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 and extending to imports of the same product consigned from the Socialist

Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines  
(Rejected)

Your kind response, and any pertinent documents, may be sent as an attachment/scanned to my email address [Muhammad.Bilal@beds.ac.uk](mailto:Muhammad.Bilal@beds.ac.uk) or if you prefer to send them through the post, please send them to 126 Strathmore Avenue, LU1 3QN, Luton, UK.

Any information received will be used purely for my doctoral research. All information collected as part of this research study will be retained for two years following submission of my doctoral thesis, and then destroyed. It will be stored on a USB memory stick/ flash drive, kept under lock and key in the Law Office, University of Bedfordshire (UK).

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Please do not hesitate to contact me if you need any further specificity with regard to the research.

Thanking you in advance for your kind assistance.

Yours faithfully,

Muhammad Bilal  
PhD Research Student  
University of Bedfordshire  
Luton, United Kingdom



Department  
for Business  
Innovation & Skills

Trade Policy Unit  
Department for Business, Innovation &  
Skills  
1 Victoria Street  
London  
SW1H 0ET

Mr Muhammad Bilal  
PhD Research Student  
University of Bedfordshire  
Luton

T +44 (0)20 7215 5000 - Public enquiries  
+44 (0)20 7215 6740 - Textphone (for  
those with hearing impairment)  
E [foi.requests@bis.gsi.gov.uk](mailto:foi.requests@bis.gsi.gov.uk)

[www.gov.uk/bis](http://www.gov.uk/bis)

Email: [Muhammad.Bilal@beds.ac.uk](mailto:Muhammad.Bilal@beds.ac.uk)

Our ref: FOI2015/19354

08 October 2015

Dear Mr Bilal,

Thank you for your email of 11 September 2015 where you requested the following information:

*Could you please supply me with any background information pertaining to the particular voting patterns of United Kingdom through the voting processes leading to the adoption of the following Council Regulations? I am specifically interested to know the reasons and factors responsible for specific voting decisions of United Kingdom, either Yes or No, as stated in parentheses following the title of each measure.*

- ☐ Closure of the written procedure for the adoption of a Council Regulation imposing a definitive anti-dumping duty and collecting definitively the provisional duty imposed on imports of polyethylene terephthalate originating in Australia, the People's Republic of China and terminating the anti-dumping proceeding concerning imports of polyethylene terephthalate originating in Pakistan and releasing the amounts secured by way of the provisional duties imposed. (UK voted Yes)
- ☐ Proposal for a Council Regulation (EC) 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan (Yes)
- ☐ Proposal for a Council Regulation (EC) 160/2002 amending Council Regulation (EC) No 2398/97 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Egypt, India and Pakistan, and terminating the proceeding with regard to imports originating in Pakistan (Yes)
- ☐ Proposal for a Council Regulation (EC) 397/2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan (No)
- ☐ Proposal for a Council Regulation (EC) 695/2006 amending Regulation (EC) No 397/2004 imposing a definitive anti-dumping duty on imports of cotton-type bed linen originating in Pakistan (Yes)
- ☐ Proposal for a Council Regulation (EC) 866/2005 (Document 9017/05) extending the definitive anti-dumping measures imposed by Council Regulation (EC) No 1470/2001 on



**Department  
for Business  
Innovation & Skills**

Trade Policy Unit  
Department for Business, Innovation & Skills  
1 Victoria Street  
London  
SW1H 0ET

Mr Muhammad Bilal  
PhD Research Student  
University of Bedfordshire  
Luton

T +44 (0)20 7215 5000 - Public enquiries  
+44 (0)20 7215 6740 - Textphone (for  
those with hearing impairment)  
E [foi.requests@bis.gsi.gov.uk](mailto:foi.requests@bis.gsi.gov.uk)

[www.bis.gov.uk](http://www.bis.gov.uk)

*imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines (Yes)*  
• ☐ *Proposal for a Council Regulation (EC) 1205/2007 imposing anti-dumping duties on imports of integrated electronic compact fluorescent lamps (CFL-i) originating in the People's Republic of China following an expiry review pursuant to Article 11(2) of Council Regulation (EC) No 384/96 and extending to imports of the same product consigned from the Socialist Republic of Vietnam, the Islamic Republic of Pakistan and the Republic of the Philippines (Rejected).*

Under the Freedom of Information Act 2000 ('the Act'), you have the right to:

- know whether we hold the information you require
- be provided with that information (subject to any exemptions under the Act which may apply).

From our preliminary assessment, it is clear that we will not be able to answer your request (in full) without exceeding the cost limit of £600 provided under s12 of the Freedom of Information Act ('the Act'). This represents the estimated cost of one person spending 3.5 working days in determining whether the Department holds the information, locating, retrieving and extracting the information. The Act provides that we are not obliged to comply with requests where the estimated cost of complying would exceed this limit.

In order to provide you with the information on the scale that you have requested would require us to undertake a trawl across a number of constituent areas of BIS and individual potential data holders to the extent of establishing whether or not they hold information within scope of your request. Additionally, this would require an extensive search of existing electronic communications and dispersed paper records from 1997 to 2007.

We estimate that it will take us in excess of 3.5 working days to seek to determine the extent of the Department's holdings, locating, retrieving and extracting the information. Therefore, your request will not be processed further.

You may wish to refine your request by narrowing its scope perhaps to particular segments of your existing request and focusing on information relating to a much reduced time period. I should also advise that a refined request may continue to engage the cost limits under the Act.

#### **Appeals procedure**

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original request and should be addressed to the Information Rights Unit:

Information Rights Unit

contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow,  
Cheshire, SK9 5AF.

Yours sincerely,

BIS Trade Policy Unit

# APPENDIX VI: SAMPLE OF IMPORT DATA OF PRODUCTS (ORIGINATED FROM PAKISTAN) WHICH HAD BEEN SUBJECT TO EUROPEAN AD DUTY<sup>674</sup>

EU trade since 1988 by CN8

[DS-016890]

Last update: 06.10.15

Source of data: Eurostat

PARTNER: PAKISTAN PRODUCT: 85393190 FLOW: IMPORT INDICATORS:

VALUE\_IN\_EUROS

PERIOD	Jan.-Dec. 2000	Jan.-Dec. 2001	Jan.-Dec. 2002	Jan.-Dec. 2003	Jan.-Dec. 2004
REPORTER					
AUSTRIA	:	:	:	:	:
BELGIUM (and LUXBG -> 1998)	:	:	:	145,581	209,616
BULGARIA	:	:	:	:	8,366
CYPRUS	:	:	:	:	:
CZECH REPUBLIC (CS->1992)	:	:	:	:	59,768
GERMANY (incl DD from 1991)	:	:	79,200	:	:
DENMARK	:	:	:	:	:
EURO AREA 19 (AT, BE, CY, DE, EE, ES, FI, FR, GR, IE, IT, LU, LV, LT, MT, NL, PT, SI, SK)	:	255,566	840,308	869,830	978,016
ESTONIA	:	:	:	2,846	832
SPAIN	:	:	380,692	301,299	142,931
EU28 (AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK)	:	316,348	880,416	869,830	1,492,181
FINLAND	:	:	:	11,201	21,378
FRANCE	:	:	:	:	:
UNITED KINGDOM	:	60,782	40,108	:	202,084
GREECE	:	:	:	:	87,648
CROATIA	:	:	:	:	:
HUNGARY	:	:	:	:	:
IRELAND	:	:	:	:	:
ITALY	:	170,545	245,704	408,903	363,102
LITHUANIA	:	:	:	:	:
LUXEMBOURG	:	:	:	:	:
LATVIA	:	:	:	:	:
MALTA	:	:	:	:	:
NETHERLANDS	:	85,021	134,712	:	152,509
POLAND	:	:	:	:	243,947
PORTUGAL	:	:	:	:	:
ROMANIA	:	:	:	:	:
SWEDEN	:	:	:	:	:
SLOVENIA	:	:	:	:	:
SLOVAKIA	:	:	:	:	:

PERIOD	Jan.-Dec. 2005	Jan.-Dec. 2006	Jan.-Dec. 2007	Jan.-Dec. 2008	Jan.-Dec. 2009
REPORTER					
AUSTRIA	:	:	:	:	:
BELGIUM (and LUXBG -> 1998)	:	:	:	:	:
BULGARIA	5,878	:	:	:	:

<sup>674</sup> Eurostat

PERIOD	Jan.-Dec. 2005	Jan.-Dec. 2006	Jan.-Dec. 2007	Jan.-Dec. 2008	Jan.-Dec. 2009
REPORTER					
CYPRUS	.	.	.	.	.
CZECH REPUBLIC (CS->1992)	.	.	.	.	.
GERMANY (incl DD from 1991)	.	.	.	.	.
DENMARK	.	.	.	.	.
EURO AREA 19 (AT, BE, CY, DE, EE, ES, FI, FR, GR, IE, IT, LU, LV, LT, MT, NL, PT, SI, SK)	.	.	1,526	.	.
ESTONIA	.	.	.	.	.
SPAIN	.	.	.	.	.
EU28 (AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK)	20,522	.	1,526	.	.
FINLAND	.	.	.	.	.
FRANCE	.	.	.	.	.
UNITED KINGDOM	14,644	.	.	.	.
GREECE	.	.	.	.	.
CROATIA	.	.	.	.	.
HUNGARY	.	.	.	.	.
IRELAND	.	.	.	.	.
ITALY	.	.	1,526	.	.
LITHUANIA	.	.	.	.	.
LUXEMBOURG	.	.	.	.	.
LATVIA	.	.	.	.	.
MALTA	.	.	.	.	.
NETHERLANDS	.	.	.	.	.
POLAND	.	.	.	.	.
PORTUGAL	.	.	.	.	.
ROMANIA	.	.	.	.	.
SWEDEN	.	.	.	.	.
SLOVENIA	.	.	.	.	.
SLOVAKIA	.	.	.	.	.

PERIOD	Jan.-Dec. 2010
REPORTER	
AUSTRIA	.
BELGIUM (and LUXBG -> 1998)	.
BULGARIA	.
CYPRUS	.
CZECH REPUBLIC (CS->1992)	.
GERMANY (incl DD from 1991)	.
DENMARK	.



PERIOD	Jan.-Dec. 2010
REPORTER	
EURO AREA 19 (AT, BE, CY, DE, EE, ES, FI, FR, GR, IE, IT, LU, LV, LT, MT, NL, PT, SI, SK)	-
ESTONIA	-
SPAIN	-
EU28 (AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK)	-
FINLAND	-
FRANCE	-
UNITED KINGDOM	-
GREECE	-
CROATIA	-
HUNGARY	-
IRELAND	-
ITALY	-
LITHUANIA	-
LUXEMBOURG	-
LATVIA	-
MALTA	-
NETHERLANDS	-
POLAND	-
PORTUGAL	-
ROMANIA	-
SWEDEN	-
SLOVENIA	-
SLOVAKIA	-

Available flags:

**b** break in time series

**e** estimated

**n** not significant

**s** Eurostat estimate (phased out)

**c** confidential

**f** forecast

**p** provisional

**u** low reliability

Special value:

**:** not available

**d** definition differs, see metadata

**l** see metadata (phased out)

**r** revised

**z** not applicable

EU trade since 1988 by CN8

[DS-016890]

Last update: 06.10.15

Source of data: Eurostat

PARTNER: PAKISTAN PRODUCT: 85393190 FLOW: IMPORT INDICATORS:  
VALUE\_IN\_EUROS

PERIOD	Jan.-Dec. 2011	Jan.-Dec. 2012	Jan.-Dec. 2013	Jan.-Dec. 2014	Jan.-Dec. 2015
REPORTER					
AUSTRIA	.	.	.	.	.
BELGIUM (and LUXBG -> 1998)	49	.	.	.	.
BULGARIA	.	.	.	.	.
CYPRUS	.	.	.	.	.
CZECH REPUBLIC (CS->1992)	.	.	.	.	.
GERMANY (incl DD from 1991)	.	.	.	.	.
DENMARK	.	.	.	.	.
EURO AREA 19 (AT, BE, CY, DE, EE, ES, FI, FR, GR, IE, IT, LU, LV, LT, MT, NL, PT, SI, SK)	108	2,894	875	.	.
ESTONIA	.	.	.	.	.
SPAIN	.	2,566	.	.	.
EU28 (AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK)	108	2,894	875	.	.
FINLAND	.	.	.	.	.
FRANCE	.	.	.	.	.
UNITED KINGDOM	.	.	.	.	.
GREECE	.	.	.	.	.
CROATIA	.	.	.	.	.
HUNGARY	.	.	.	.	.
IRELAND	.	.	.	.	.
ITALY	.	.	.	.	.
LITHUANIA	59	328	875	.	.
LUXEMBOURG	.	.	.	.	.
LATVIA	.	.	.	.	.
MALTA	.	.	.	.	.
NETHERLANDS	.	.	.	.	.
POLAND	.	.	.	.	.
PORTUGAL	.	.	.	.	.
ROMANIA	.	.	.	.	.
SWEDEN	.	.	.	.	.
SLOVENIA	.	.	.	.	.
SLOVAKIA	.	.	.	.	.

Available flags:

b break in time series

e estimated

n not significant

s Eurostat estimate (phased out)

c confidential

f forecast

p provisional

u low reliability

d definition differs, see metadata

l see metadata (phased out)

r revised

z not applicable

Special value:

: not available

EU trade since 1988 by CN8

Last update: 05.10.15

Source of data: Eurostat

[DS-016890]

PARTNER: PAKISTAN PRODUCT: 63022100 FLOW: IMPORT INDICATORS:  
VALUE\_IN\_EUROS

PERIOD	Jan.-Dec. 1994	Jan.-Dec. 1995	Jan.-Dec. 1996	Jan.-Dec. 1997	Jan.-Dec. 1998
REPORTER					
AUSTRIA	:	1,403,732	1,437,331	781,940	751,716
BELGIUM (and LUXBG -> 1998)	7,170,204	11,360,664	3,559,226	5,907,149	6,463,699
BULGARIA	:	:	:	:	:
CYPRUS	:	:	:	:	:
CZECH REPUBLIC (CS->1992)	:	:	:	:	:
GERMANY (incl DD from 1991)	24,405,926	22,712,073	27,304,925	25,088,305	23,541,711
DENMARK	884,462	2,031,634	1,792,822	2,367,444	2,330,100
EURO AREA 19 (AT, BE, CY, DE, EE, ES, FI, FR, GR, IE, IT, LU, LV, LT, MT, NL, PT, SI, SK)	:	:	:	:	:
ESTONIA	:	:	:	:	:
SPAIN	307,579	420,267	861,220	974,777	760,323
EU28 (AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK)	:	:	:	:	:
FINLAND	:	1,008,888	1,406,614	1,013,225	846,267
FRANCE	17,903,470	20,763,271	18,856,584	18,380,639	24,885,941
UNITED KINGDOM	2,428,675	2,925,997	3,374,387	2,860,661	1,655,675
GREECE	27,014	73,416	164,618	90,624	149,505
CROATIA	:	:	:	:	:
HUNGARY	:	:	:	:	:
IRELAND	28,954	62,223	:	13,708	219,547
ITALY	1,816,169	2,780,031	4,790,218	3,674,785	2,436,951
LITHUANIA	:	:	:	:	:
LUXEMBOURG	:	:	:	:	:
LATVIA	:	:	:	:	:
MALTA	:	:	:	:	:
NETHERLANDS	17,865,681	20,024,161	19,024,966	18,360,606	23,490,986
POLAND	:	:	:	:	:
PORTUGAL	:	236,441	:	:	:
ROMANIA	:	:	:	:	:
SWEDEN	:	5,185,258	6,198,285	10,718,331	7,684,375
SLOVENIA	:	:	:	:	:
SLOVAKIA	:	:	:	:	:

PERIOD	Jan.-Dec. 1999	Jan.-Dec. 2000	Jan.-Dec. 2001
REPORTER			
AUSTRIA	1,183,452	758,987	1,910,633
BELGIUM (and LUXBG -> 1998)	9,082,456	5,448,971	6,496,671
BULGARIA	:	:	:

EU trade since 1988 by CN8

[DS-016890]

Last update: 05.10.15

Source of data: Eurostat

PARTNER: PAKISTAN PRODUCT: 63023290 FLOW: IMPORT INDICATORS:  
VALUE\_IN\_EUROS

PERIOD	Jan.-Dec. 1994	Jan.-Dec. 1995	Jan.-Dec. 1996	Jan.-Dec. 1997	Jan.-Dec. 1998
REPORTER					
AUSTRIA	:	:	:	6,055	:
BELGIUM (and LUXBG -> 1998)	50,480	16,062	11,252	240,510	421,944
BULGARIA	:	:	:	:	:
CYPRUS	:	:	:	:	:
CZECH REPUBLIC (CS->1992)	:	:	:	:	:
GERMANY (incl DD from 1991)	176,690	71,076	286,577	681,638	826,689
DENMARK	179,492	90,560	6,263	40,257	25,712
EURO AREA 19 (AT, BE, CY, DE, EE, ES, FI, FR, GR, IE, IT, LU, LV, LT, MT, NL, PT, SI, SK)	:	:	:	:	:
ESTONIA	:	:	:	:	:
SPAIN	54,032	512,341	337,177	597,426	1,078,148
EU28 (AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK)	:	:	:	:	:
FINLAND	:	9,191	71,014	104,151	87,977
FRANCE	334,267	354,745	47,482	1,013,103	1,617,494
UNITED KINGDOM	1,888,684	1,701,440	3,233,173	4,964,403	6,369,401
GREECE	:	:	:	108,429	107,660
CROATIA	:	:	:	:	:
HUNGARY	:	:	:	:	:
IRELAND	:	:	6,620	10,122	36,223
ITALY	32,778	197,375	169,164	61,370	99,092
LITHUANIA	:	:	:	:	:
LUXEMBOURG	:	:	:	:	:
LATVIA	:	:	:	:	:
MALTA	:	:	:	:	:
NETHERLANDS	:	:	540	1,667	41,220
POLAND	:	:	:	:	:
PORTUGAL	:	:	:	:	:
ROMANIA	:	:	:	:	:
SWEDEN	:	:	5,857	16,027	10,313
SLOVENIA	:	:	:	:	:
SLOVAKIA	:	:	:	:	:

PERIOD	Jan.-Dec. 1999	Jan.-Dec. 2000	Jan.-Dec. 2001	Jan.-Dec. 2002	Jan.-Dec. 2003
REPORTER					
AUSTRIA	59,210	32,985	233,643	269,660	610,736
BELGIUM (and LUXBG -> 1998)	366,963	432,894	789,019	977,534	2,363,081
BULGARIA	4,249	183	:	:	:

PERIOD	Jan.-Dec. 1999	Jan.-Dec. 2000	Jan.-Dec. 2001
REPORTER			
CYPRUS	356,396	916,512	506,555
CZECH REPUBLIC (CS->1992)	209,947	366,040	433,679
GERMANY (incl DD from 1991)	24,714,991	16,566,903	12,399,221
DENMARK	1,466,364	1,087,170	2,237,516
EURO AREA 19 (AT, BE, CY, DE, EE, ES, FI, FR, GR, IE, IT, LU, LV, LT, MT, NL, PT, SI, SK)	92,599,447	84,017,493	74,001,541
ESTONIA	16,142	7,234	12,847
SPAIN	869,315	821,205	1,050,803
EU28 (AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK)	105,236,231	95,949,476	94,305,195
FINLAND	770,595	302,113	322,167
FRANCE	30,256,314	33,391,549	30,678,109
UNITED KINGDOM	2,411,035	2,038,877	6,966,918
GREECE	11,545	87,933	16,715
CROATIA	:	:	26,108
HUNGARY	392,694	324,958	381,858
IRELAND	285,337	76,601	48,291
ITALY	3,089,693	2,926,345	3,158,516
LITHUANIA	1,728	4,976	1,953
LUXEMBOURG	4,463	:	:
LATVIA	:	:	:
MALTA	167,075	232,086	189,230
NETHERLANDS	21,675,209	22,246,531	16,808,556
POLAND	:	:	:
PORTUGAL	:	157,667	287,730
ROMANIA	:	:	1,232
SWEDEN	7,391,456	6,812,133	9,177,373
SLOVENIA	63,986	12,590	68,812
SLOVAKIA	:	:	:

Available flags:

**b** break in time series

**e** estimated

**n** not significant

**s** Eurostat estimate (phased out)

**c** confidential

**f** forecast

**p** provisional

**u** low reliability

**d** definition differs, see metadata

**i** see metadata (phased out)

**r** revised

**z** not applicable

Special value:

: not available



PERIOD	Jan.-Dec. 1999	Jan.-Dec. 2000	Jan.-Dec. 2001	Jan.-Dec. 2002	Jan.-Dec. 2003
REPORTER					
CYPRUS	90,386	13,870	118,546	122,062	73,820
CZECH REPUBLIC (CS->1992)	359	180	1,045	155,510	72,533
GERMANY (Incl DD from 1991)	1,476,451	2,273,124	2,351,364	1,224,326	774,854
DENMARK	:	92,098	83,670	845,162	2,742,113
EURO AREA 19 (AT, BE, CY, DE, EE, ES, FI, FR, GR, IE, IT, LU, LV, LT, MT, NL, PT, SI, SK)	5,607,417	7,549,805	8,807,469	12,089,219	12,885,895
ESTONIA	:	:	:	121,123	1,166
SPAIN	665,073	1,100,616	1,695,048	4,971,588	5,612,244
EU28 (AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK)	18,447,829	26,732,937	38,660,810	67,117,876	65,285,815
FINLAND	167,700	132,605	191,206	388,564	101,121
FRANCE	2,311,912	3,243,656	3,070,661	2,528,946	2,248,894
UNITED KINGDOM	12,700,960	18,955,203	29,208,390	53,381,848	48,962,158
GREECE	46,504	:	56,427	225,424	467,273
CROATIA	:	:	386	16,045	:
HUNGARY	7,444	85,458	327,911	473,959	345,246
IRELAND	170,486	150,596	40,933	728,606	124,862
ITALY	105,346	17,958	70,568	175,987	287,505
LITHUANIA	:	:	1,400	2,257	18,667
LUXEMBOURG	:	:	:	:	:
LATVIA	:	:	:	:	6,531
MALTA	3,584	:	:	:	32,212
NETHERLANDS	143,802	75,094	188,654	282,478	155,142
POLAND	:	:	:	:	:
PORTUGAL	:	66,879	:	42,238	:
ROMANIA	33,783	:	:	608	2,649
SWEDEN	79,360	39,069	145,806	138,694	247,455
SLOVENIA	:	9,528	:	15,836	4,390
SLOVAKIA	:	:	:	:	:

Available flags:

**b** break in time series

**e** estimated

**n** not significant

**s** Eurostat estimate (phased out)

**c** confidential

**f** forecast

**p** provisional

**u** low reliability

**d** definition differs, see metadata

**l** see metadata (phased out)

**r** revised

**z** not applicable

Special value:

: not available

EU trade since 1988 by CN8

[DS-016890]

Last update: 05.10.15

Source of data: Eurostat

PARTNER: PAKISTAN PRODUCT: 63023290 FLOW: IMPORT INDICATORS:  
VALUE\_IN\_EUROS

PERIOD	Jan.-Dec. 2004	Jan.-Dec. 2005	Jan.-Dec. 2006	Jan.-Dec. 2007	Jan.-Dec. 2008
REPORTER					
AUSTRIA	642,918	291,491	347,119	371,265	115,479
BELGIUM (and LUXBG -> 1998)	4,447,969	6,988,565	6,033,166	3,050,342	2,354,929
BULGARIA	:	:	1,960	:	:
CYPRUS	259,319	341,353	619,655	358,656	297,963
CZECH REPUBLIC (CS->1992)	12,677	13,778	:	:	9,058
GERMANY (incl DD from 1991)	280,329	915,201	1,150,202	1,762,570	1,895,938
DENMARK	2,201,613	2,881,164	2,826,448	3,357,848	5,361,784
EURO AREA 19 (AT, BE, CY, DE, EE, ES, FI, FR, GR, IE, IT, LU, LV, LT, MT, NL, PT, SI, SK)	16,211,642	16,088,963	15,514,703	17,256,954	21,010,020
ESTONIA	:	:	150,299	45,491	68,881
SPAIN	5,371,615	3,667,471	3,306,438	6,550,397	7,864,357
EU28 (AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK)	64,561,940	51,654,274	52,046,560	63,857,566	55,799,400
FINLAND	465,661	77,081	163,619	458,980	326,951
FRANCE	2,646,841	1,936,550	2,234,983	2,331,838	4,176,287
UNITED KINGDOM	45,704,589	32,495,124	33,571,055	42,405,395	27,743,968
GREECE	16,306	:	92,211	298,194	327,305
CROATIA	10,365	5,471	1,225	3,004	8,388
HUNGARY	194,249	66,868	0	69,155	:
IRELAND	1,294,089	478,470	52,842	242,574	1,224,281
ITALY	513,277	1,024,697	759,691	1,169,495	1,034,892
LITHUANIA	51,260	10,217	37,909	36,295	6,159
LUXEMBOURG	:	:	:	:	:
LATVIA	:	22,099	78,955	:	:
MALTA	4,407	4,214	90,060	81,838	81,920
NETHERLANDS	215,606	166,398	222,501	279,596	694,955
POLAND	182,073	32,203	:	434,542	647,125
PORTUGAL	705	165,156	175,053	74,256	135,503
ROMANIA	106	559	691	:	1,900
SWEDEN	44,626	70,144	130,478	330,668	1,017,157
SLOVENIA	:	:	:	:	:
SLOVAKIA	1,340	:	:	145,167	404,220

PERIOD	Jan.-Dec. 2009	Jan.-Dec. 2010	Jan.-Dec. 2011	Jan.-Dec. 2012	Jan.-Dec. 2013
REPORTER					
AUSTRIA	457,182	182,212	421,249	1,201,504	2,584,238
BELGIUM (and LUXBG -> 1998)	1,812,928	3,451,088	5,336,380	3,809,526	3,795,743
BULGARIA	:	:	:	:	:

PERIOD	Jan.-Dec. 2009	Jan.-Dec. 2010	Jan.-Dec. 2011	Jan.-Dec. 2012	Jan.-Dec. 2013
REPORTER					
CYPRUS	217,650	168,900	363,999	79,358	143,095
CZECH REPUBLIC (CS->1992)	:	15,820	:	28,262	:
GERMANY (Incl DD from 1991)	2,872,432	3,534,861	5,815,904	4,203,644	4,394,199
DENMARK	5,248,338	5,725,311	7,923,568	7,091,338	7,385,332
EURO AREA 19 (AT, BE, CY, DE, EE, ES, FI, FR, GR, IE, IT, LU, LV, LT, MT, NL, PT, SI, SK)	24,152,603	27,238,149	40,028,971	35,986,904	47,075,424
ESTONIA	146,595	84,140	201,022	54,410	57,070
SPAIN	8,845,735	7,911,941	11,095,912	7,909,823	11,047,936
EU28 (AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK)	75,253,380	96,230,095	114,322,102	110,049,208	115,610,711
FINLAND	354,927	547,461	346,031	479,754	313,651
FRANCE	4,370,068	6,430,407	9,681,466	10,373,794	11,775,054
UNITED KINGDOM	43,751,332	61,937,787	64,278,337	65,787,362	59,447,932
GREECE	206,609	237,244	288,801	221,125	280,774
CROATIA	1,430	5,232	339	13,017	7,892
HUNGARY	13,380	39,087	36,166	13,518	:
IRELAND	746,268	902,668	614,728	2,896,959	5,863,985
ITALY	1,232,663	700,261	3,075,196	2,343,978	2,259,525
LITHUANIA	12,426	40,692	:	9,947	67,618
LUXEMBOURG	:	:	:	:	:
LATVIA	:	:	:	:	20,820
MALTA	31,031	98,493	86,347	218,739	263,451
NETHERLANDS	1,259,760	1,396,046	1,798,977	1,286,204	3,531,742
POLAND	892,185	460,358	873,934	233,177	508,176
PORTUGAL	119,751	524,369	152,649	406,429	128,457
ROMANIA	775	4,927	36,825	26,951	36,009
SWEDEN	1,193,337	803,424	1,143,962	868,679	1,149,946
SLOVENIA	:	:	:	:	:
SLOVAKIA	1,466,578	1,027,366	750,310	491,710	548,066

PERIOD	Jan.-Dec. 2014	Jan.-Dec. 2015
REPORTER		
AUSTRIA	592,663	:
BELGIUM (and LUXBG -> 1998)	4,540,805	:
BULGARIA	:	:
CYPRUS	164,380	:
CZECH REPUBLIC (CS->1992)	14,883	:
GERMANY (Incl DD from 1991)	6,460,648	:
DENMARK	9,205,660	:



PERIOD	Jan.-Dec. 2014	Jan.-Dec. 2015
REPORTER		
EURO AREA 19 (AT, BE, CY, DE, EE, ES, FI, FR, GR, IE, IT, LU, LV, LT, MT, NL, PT, SI, SK)	60,735,398	:
ESTONIA	91,271	:
SPAIN	13,884,123	:
EU28 (AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK)	141,915,979	:
FINLAND	58,423	:
FRANCE	19,301,249	:
UNITED KINGDOM	69,478,835	:
GREECE	455,662	:
CROATIA	:	:
HUNGARY	:	:
IRELAND	6,865,472	:
ITALY	3,672,616	:
LITHUANIA	25,774	:
LUXEMBOURG	:	:
LATVIA	211,172	:
MALTA	274,483	:
NETHERLANDS	3,145,312	:
POLAND	506,345	:
PORTUGAL	476,379	:
ROMANIA	:	:
SWEDEN	1,974,858	:
SLOVENIA	:	:
SLOVAKIA	514,966	:

Available flags:

**b** break in time series

**e** estimated

**n** not significant

**s** Eurostat estimate (phased out)

**c** confidential

**f** forecast

**p** provisional

**u** low reliability

**d** definition differs, see metadata

**l** see metadata (phased out)

**r** revised

**z** not applicable

Special value:

: not available

EU trade since 1988 by CN8

Last update: 05.10.15

Source of data: Eurostat

[DS-016890]

PARTNER: PAKISTAN PRODUCT: 63023190 FLOW: IMPORT INDICATORS:  
VALUE\_IN\_EUROS

PERIOD	Jan.-Dec. 2004	Jan.-Dec. 2005	Jan.-Dec. 2006	Jan.-Dec. 2007	Jan.-Dec. 2008
REPORTER					
AUSTRIA	172,348	.	.	.	.
BELGIUM (and LUXBG -> 1998)	5,507,910	.	.	.	.
BULGARIA	.	.	.	.	.
CYPRUS	255,599	.	.	.	.
CZECH REPUBLIC (CS->1992)	135,708	.	.	.	.
GERMANY (Incl DD from 1991)	2,535,714	.	.	.	.
DENMARK	1,705,121	.	.	.	.
EURO AREA 19 (AT, BE, CY, DE, EE, ES, FI, FR, GR, IE, IT, LU, LV, LT, MT, NL, PT, SI, SK)	31,455,412	.	.	.	.
ESTONIA	3,927	.	.	.	.
SPAIN	2,596,090	.	.	.	.
EU28 (AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK)	59,210,508	.	.	.	.
FINLAND	1,339,201	.	.	.	.
FRANCE	7,944,312	.	.	.	.
UNITED KINGDOM	23,048,773	.	.	.	.
GREECE	601,596	.	.	.	.
CROATIA	345,553	.	.	.	.
HUNGARY	739,062	.	.	.	.
IRELAND	451,639	.	.	.	.
ITALY	5,188,548	.	.	.	.
LITHUANIA	67,808	.	.	.	.
LUXEMBOURG	.	.	.	.	.
LATVIA	18,630	.	.	.	.
MALTA	105,241	.	.	.	.
NETHERLANDS	4,628,060	.	.	.	.
POLAND	247,620	.	.	.	.
PORTUGAL	.	.	.	.	.
ROMANIA	13,181	.	.	.	.
SWEDEN	1,520,078	.	.	.	.
SLOVENIA	36,939	.	.	.	.
SLOVAKIA	1,850	.	.	.	.

PERIOD	Jan.-Dec. 2009	Jan.-Dec. 2010	Jan.-Dec. 2011	Jan.-Dec. 2012	Jan.-Dec. 2013
REPORTER					
AUSTRIA	.	.	.	.	.
BELGIUM (and LUXBG -> 1998)	.	.	.	.	.
BULGARIA	.	.	.	.	.

PERIOD	Jan.-Dec. 2009	Jan.-Dec. 2010	Jan.-Dec. 2011	Jan.-Dec. 2012	Jan.-Dec. 2013
REPORTER					
CYPRUS	..	..	..	..	..
CZECH REPUBLIC (CS->1992)	..	..	..	..	..
GERMANY (incl DD from 1991)	..	..	..	..	..
DENMARK	..	..	..	..	..
EURO AREA 19 (AT, BE, CY, DE, EE, ES, FI, FR, GR, IE, IT, LU, LV, LT, MT, NL, PT, SI, SK)	..	..	..	..	..
ESTONIA	..	..	..	..	..
SPAIN	..	..	..	..	..
EU28 (AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK)	..	..	..	..	..
FINLAND	..	..	..	..	..
FRANCE	..	..	..	..	..
UNITED KINGDOM	..	..	..	..	..
GREECE	..	..	..	..	..
CROATIA	..	..	..	..	..
HUNGARY	..	..	..	..	..
IRELAND	..	..	..	..	..
ITALY	..	..	..	..	..
LITHUANIA	..	..	..	..	..
LUXEMBOURG	..	..	..	..	..
LATVIA	..	..	..	..	..
MALTA	..	..	..	..	..
NETHERLANDS	..	..	..	..	..
POLAND	..	..	..	..	..
PORTUGAL	..	..	..	..	..
ROMANIA	..	..	..	..	..
SWEDEN	..	..	..	..	..
SLOVENIA	..	..	..	..	..
SLOVAKIA	..	..	..	..	..

PERIOD	Jan.-Dec. 2014	Jan.-Dec. 2015
REPORTER		
AUSTRIA	..	..
BELGIUM (and LUXBG -> 1998)	..	..
BULGARIA	..	..
CYPRUS	..	..
CZECH REPUBLIC (CS->1992)	..	..
GERMANY (incl DD from 1991)	..	..
DENMARK	..	..

PERIOD	Jan.-Dec. 2014	Jan.-Dec. 2015
REPORTER		
EURO AREA 19 (AT, BE, CY, DE, EE, ES, FI, FR, GR, IE, IT, LU, LV, LT, MT, NL, PT, SI, SK)	.	.
ESTONIA	.	.
SPAIN	.	.
EU28 (AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, FR, GB, GR, HR, HU, IE, IT, LT, LU, LV, MT, NL, PL, PT, RO, SE, SI, SK)	.	.
FINLAND	.	.
FRANCE	.	.
UNITED KINGDOM	.	.
GREECE	.	.
CROATIA	.	.
HUNGARY	.	.
IRELAND	.	.
ITALY	.	.
LITHUANIA	.	.
LUXEMBOURG	.	.
LATVIA	.	.
MALTA	.	.
NETHERLANDS	.	.
POLAND	.	.
PORTUGAL	.	.
ROMANIA	.	.
SWEDEN	.	.
SLOVENIA	.	.
SLOVAKIA	.	.

Available flags:

**b** break in time series

**e** estimated

**n** not significant

**s** Eurostat estimate (phased out)

**c** confidential

**f** forecast

**p** provisional

**u** low reliability

**d** definition differs, see metadata

**i** see metadata (phased out)

**r** revised

**z** not applicable

Special value:

: not available

